antee of small depositors in banks of Federal Reserve System; to the Committee on Banking and Currency.

1126. Also, telegram from J. K. Hughes, president Nevers-such Oil Co., and E. L. Smith, president E. L. Smith Oil Co., of Mexia, Tex., favoring Federal legislation to curb oil production; to the Committee on Interstate and Foreign Commerce.

1127. Also, petition of Henderson, Kidd & Henderson, of Cameron, Tex., opposing provision of Senate bill 1094 denying loans to corporations paying salaries in excess of $17,500; to the Committee on Banking and Currency.

1128. Also, resolution adopted by the Senate of the State of Texas, favoring expenditure of relief funds upon highways in the State of Texas; to the Committee on Roads.

1129. By Mr. LINDSAY: Petition of Warehousemen's Association of the Port of New York, Inc., New York City, opposing the passage of Senate bill 158; to the Committee on Labor.

1130. Also, petition of Independent Petroleum Association of America, Washington, D.C., favoring the adoption of the oil-control measure presented by Congressman MARLAND; to the Committee on Interstate and Foreign Commerce.

1131. By Mr. LUDLOW: Petition of the Jewish Educational Association of Indianapolis, Ind., requesting the United States to make official protest of the treatment given the Jewish citizens of Germany; to the Committee on Foreign Affairs.

1132. Also, petition of the Beth-El-Zedeck Sisterhood of Indianapolis, Ind., asking the United States Government to make official protest of treatment given Jewish citizens of Germany; to the Committee on Foreign Affairs.

1133. By Mr. McFADDEN: Petition of the Order of Railroad Telegraphers, opposing the Emergency Railroad Transportation Act of 1933 unless amendments proposed by organized railway labor are incorporated therein; to the Committee on Interstate and Foreign Commerce.

1134. Also, three resolutions of the Strawn-Turner Post, No. 1627, Veterans of Foreign Wars of the United States, Seat Pleasant, Md., (1) on silver—the money of the masses, (2) on banking, (3) support of and cooperation with farmers; to the Committee on Banking and Currency.

1135. Also, petition of Edward T. Lee, a citizen of Chicago, Ill., for the abolition of railroad grade crossings; to the Committee on Interstate and Foreign Commerce.

1136. By Mrs. ROGERS of Massachusetts: Petition of Boston City Council of Boston, Mass., favoring a study of the entire matter of veterans' legislation in the hope that such study will bring about a favorable adjustment, to the end that no veteran suffering from a disability incurred in line of duty while in the active military and naval service of the United States shall be called upon to bear a greater sacrifice than other classes of the American public, bearing in mind the hardships and tribulations that they endured during the period of war; to the Committee on World War Veterans' Legislation.

1137. Also, petition of the Boston City Council of Boston, Mass., opposing the transfer of tradesmen from the Philadelphia Navy Yard to the Boston Navy Yard to work on the new destroyer which is now in process of construction; to the Committee on Naval Affairs.

1138. By Mr. RUDD: Petition of Warehousemen's Association of the Port of New York, Inc., New York, opposing the passage of the Black bill, S. 158, and the enactment of any law under which a definite limit of hours of any working day shall be placed; to the Committee on Labor.

1139. By Mr. WIGGLESWORTH: Petition of the mayor and City Council of Quincy, Mass., with reference to a study of the entire matter of veterans' legislation, in the hope that such study will bring about a favorable adjustment, to the end that no veteran suffering from a disability incurred in line of duty while in the active military and naval service of the United States shall be called upon to bear a greater sacrifice than other classes of the American public; to the Committee on World War Veterans' Legislation.

SENATE

MONDAY, MAY 22, 1933

(Legislative day of Monday, May 15, 1933)

The Senate sitting as a court for the trial of articles of impeachment against Harold Louderback, judge of the United States District Court for the Northern District of California, met at 12 o'clock meridian, on the expiration of the recess.

The managers on the part of the House of Representatives appeared in the seats provided for them.

The respondent, Harold Louderback, with his counsel, Walter H. Linforth, Esq., and James M. Hanley, Esq., appeared in the seats assigned to them.

PROCLAMATION

The VICE PRESIDENT. The Sergeant at Arms will proclaim the Senate sitting as a Court of Impeachment in session.

The Sergeant at Arms made the usual proclamation.

THE JOURNAL

The Chief Clerk proceeded to read the proceedings of the Senate sitting as a Court of Impeachment for the calendar day of Saturday, May 20, when, on motion of Mr. ASHURST, and by unanimous consent, the further reading was dispensed with, and the Journal was approved.

ARREST OF WITNESS LEAKE

The VICE PRESIDENT. The Chair lays before the Senate a report from the Sergeant at Arms, which will be read.

The Chief Clerk read as follows:

SENATE OF THE UNITED STATES,
OFFICE OF THE SERGEANT AT ARMS,
Washington, D.C., May 20, 1933.

Hon. JOHN N. GARNER,
Vice President and President of the Senate,
Washington, D.C.

MY DEAR MR. VICE PRESIDENT: In pursuance of the order of the Senate dated May 17, 1933, commanding me to forthwith arrest and take into custody and bring to the bar of the Senate W. S. Leake, of San Francisco, Calif., I did, acting through my deputy, W. A. Rorer, on May 17, 1933, arrest and take Mr. Leake into custody.

The said W. S. Leake is now in my custody, and I await the further order of the Senate.

The original warrant issued in the case is attached hereto.

Respectfully yours,

CHESLEY W. JURNEY,
Sergeant at Arms.

EXAMINATION OF W. S. LEAKE

Mr. LINFORTH. Mr. W. S. Leake is here, in obedience to the mandate of this honorable body sitting as a Court of Impeachment, and I should like at this time to call him, out of order, as a witness on behalf of the respondent; and we desire merely to supplement the testimony given by him in San Francisco that has already been read into the RECORD by the other side of this proceedings.

The VICE PRESIDENT. The witness will be called.

W. S. Leake, having been duly sworn, was examined and testified as follows:

Mr. LINFORTH. Shall I proceed, Mr. President?

The VICE PRESIDENT. Counsel will proceed.

By Mr. LINFORTH:

Q. Mr. Leake, where do you reside?—A. San Francisco, Calif.

Q. How long have you resided in San Francisco?—A. Off and on, ever since I was 8 years of age, mostly in San Francisco.

Q. And whereabout in San Francisco do you live and how long have you lived there?—A. At the Fairmont Hotel ever since it was rebuilt.

Q. In about what year?—A. It was remodeled right after the fire in 1906.

Q. And is that one of the leading family hotels in San Francisco?—A. It is.

Q. Did you continue to live there with your wife until her death?—A. Yes.

Q. Have you lived there ever since?—A. Yes.

Q. And when did your wife die?—A. November 15, 1931.

Q. Did you have anything whatever to do with Judge Louderback's registering as a voter in Contra Costa County?—A. I did not.

Q. Did you at any time enter into any arrangement or any conspiracy with Judge Louderback with reference to that registration?—A. I did not.

Q. Did you know at or prior to the time of that registration that he had any intention of registering in that county?—A. I did not.

Q. Would you state, in your own way, and as briefly as you can, how it happened that the bills of Judge Louderback in that hotel have been made out in your name?—A. Well, I had an extra room to rent and take a nap in away from my own room on account of the illness of my wife——

Mr. Manager PERKINS. The Managers on the part of the House object to that on account of its being merely a repetition of what is already in the record.

The VICE PRESIDENT. The Senate sitting as a court admitted that record with the idea that when the witness came here he could explain the case entirely to the Senate. The counsel will proceed.

By Mr. LINFORTH:

Q. Will you please proceed with your answer, Mr. Leake?—A. May I have the question read?

The Official Reporter read the question, as follows:

Q. Would you state, in your own way, and as briefly as you can, how it happened that the bills of Judge Louderback in that hotel have been made out in your name?

The WITNESS. He told me he wanted to have a room in the Fairmont Hotel. I was given to understand that upon some little misunderstanding in his own home he preferred not to create any publicity about it. I told him he could have the room that I had used to sleep in and he occupied the room and the room continued in my name.

Q. Did you explain to the management of the hotel the fact that Judge Louderback was to occupy that room?—A. Yes, sir.

Q. And was that arrangement agreeable to them?

Mr. Manager PERKINS. We object on account of the leading form of the question.

Mr. LINFORTH. I am leading him only on account of the condition of the witness. I want to make the examination as brief as possible.

The VICE PRESIDENT. The Chair is in sympathy with the witness, but cannot counsel conduct the examination in the ordinary way?

Mr. LINFORTH. Very well. I ask that the question be read.

The Official Reporter read as follows:

Q. And was that arrangement agreeable to them?

By Mr. LINFORTH:

Q. I will put it in this way: When you took the matter up with the hotel people and explained the situation to them, what did they say?—A. Perfectly satisfactory.

Q. From that time on have you received from Judge Louderback monthly the full amount charged for that room?—A. Every single month.

Q. And did you pay the amount that you received from Judge Louderback for that purpose to the hotel?—A. I did.

Q. Were the payments made to you by Judge Louderback in cash or by check?—A. Mostly in checks. If at any time checks were not presented it was probably when he was away on vacation or away on court in some other locality and in those cases—how frequent I cannot recall—I paid the cash and upon his return invariably I was reimbursed.

Q. The checks that you so received from Judge Louderback—did you endorse those very checks and give them to the hotel?—A. I did.

Q. Do you know Mr. and Mrs. Hathaway?—A. I do.

Q. How long have you known them?—A. Mr. Hathaway and I were boys in Sacramento. Mrs. Hathaway I have known for a long time, but I have known Mr. Hathaway much longer.

Q. Did they reside at the Fairmont Hotel during the entire period that you resided there?—A. Not the entire period that I resided there. I was there a long time before they came.

Q. What were the relations, briefly, between Mrs. Hathaway and your wife?—A. They were very devoted.

Q. And how long was your wife ill before she passed away?—A. More than 2 years.

Q. Did you at any time, directly or indirectly, receive any money from John Douglas Short?—A. Not one cent.

Q. Did you at any time make a loan from your friend, Mr. Hathaway?—A. Make a loan! I borrowed money; I did not make anything.

Q. When was it that you borrowed money from Mr. Hathaway?—A. My recollection is in March—I think it was the 25th of March—1931. It was the year that my wife passed away.

Q. At that time how much did you borrow from Hathaway?—A. $1,000.

Q. Did you give him a note for that sum?—A. I did.

Q. Upon receiving that money what did you do with it?—A. I paid the bill, either to a doctor or a nurse, of $200, and put $800 in the hotel—gave it to the cashier to be credited to my account.

Q. At the time of the making of that loan from your friend, Mr. Hathaway, were you in arrears in your hotel bill?—A. I was.

Q. Do you remember how much or to what extent?—A. About $400.

Q. What was the condition of the health of your wife at that time?—A. Very precarious.

Q. Did you at any time thereafter receive any money from Mr. Hathaway?—A. Yes, sir.

Q. Will you please state when, how much, and under what conditions?—A. I cannot give you the date, but I can give the circumstances and you can perhaps fix it.

Mr. Hathaway was getting ready to go to his property in the country. He came to me and told me that he was going away for a month and he did not feel justified because he knew that I was in financial straits and he insisted and he insisted that I take $250. I told him I thought maybe I could get along until he returned, but to be safe about it I had better take it, and I did, and I am glad that I did.

Q. Were those the only moneys that were ever received as a loan from Mr. Hathaway?—A. That is the only time—those are the only times.

Q. Do you know Mr. Hunter who was appointed receiver in the Russell-Colvin case?—A. I do.

Q. Was he also a resident of this same hotel?—A. He was.

Q. Did you have any talk with him in regard to his acting as receiver in that matter?—A. I did.

Q. Will you state briefly in your own way what talk you had with him on that subject?—A. I am not able to remember the date nor the month nor the day. One afternoon—I would judge about between 5 and 6 o'clock, because I had returned to the hotel from my office—Judge Louderback came in and told me of some controversy that he had had with some gentleman by the name of Strong in reference to a receivership. He asked me if I knew of anyone who was an expert accountant and was familiar with banking and stocks and bonds. I told him that I could not recall anybody at the present time and asked him how long a time would I have to think it over and investigate. He said, "By tomorrow morning will do." I said, "I want to have time enough, because I know that you need a good man and I do not want to suggest anyone that is not."

During the conversation Mr. Hunter, whom I knew very slightly, merely to pass the time of day, walked through the lobby. I said to Judge Louderback, "There is a man you ought to have if you can get him." He asked me what he was doing, and I told him that he had just been appointed to some important position with the firm of Cavalier & Co.

and that he had been in the bank—I forget the name of it—the bank that was headed by Mr. John Drum.

He asked me if that was the same Hunter that had handled some estate or something in Alameda County. I told him I had heard something about it, but I was not sure about it. He said, "If that is the man, I know he is a good man." He asked me if I would see Mr. Hunter and see whether he was available or not. I went over and saw Mr. Hunter and told him briefly the circumstances, and he said he was not sure that he was available because he had just been appointed, and he would have to see his boss. I asked him who his boss was, and he said Mr. Cavalier, and that Mr. Cavalier either lived or had gone to Oakland, and he would not be able to see him until the next morning, and he would let me know.

Q. Did you hear from Mr. Hunter the next day?—A. I think by telephone. That is my recollection.

Q. What did he say to you?—A. That he would accept it; that he had got permission from his firm and would accept it.

Q. Did you communicate that fact then to Judge Louderback?—A. I did.

Q. What, if anything, did Judge Louderback say?—A. He asked me to have Mr. Hunter report at the Post Office Building where his court was.

Q. Did you say anything at that time as to whether or not he had removed Mr. Strong?—A. Yes, sir.

Q. What did he say in that respect?—A. I do not recall any particular conversation except that he had removed Mr. Strong and ordered Mr. Hunter to report there.

Q. When he made the suggestion to have Mr. Hunter report, was anything said about bonds or sureties?—A. Oh, yes; to be prepared to give bond in whatever the proceeding was.

Q. Was that talk with Judge Louderback over the telephone?—A. It was.

Q. After having that talk with Judge Louderback over the telephone did you communicate with Mr. Hunter?—A. I did.

Q. What did you tell him?—A. I told him just what Judge Louderback told me; for him to report there and to be prepared to give a bond.

Q. Was that talk over the telephone?—A. It was.

Q. On the evening of the day that Mr. Hunter was appointed receiver, which for your information was March 13, did you see Mr. Hunter in your room?—A. He came to my room in the evening.

Q. What talk did you have that evening with Mr. Hunter in your room on the question of his appointment as receiver, if any?—A. There was very little talk about it. He told me that he had accepted it and given a bond, and he was going to appoint an attorney by the name of Short and Erskine & Erskine. I told him I did not know who Erskine & Erskine was. He said he knew them well, and he must have known them because he spoke of them, calling them by their first names to me.

Q. Did he in your presence and from your room telephone to Mr. Short at his residence at Woodside?—A. I do not know where it was, but he asked if he could telephone—oh, I think he did, because he asked for the telephone book. He asked me if he could use my phone and I told him he certainly could, and he did use it.

Q. Did you hear his telephone talk with Mr. Short?—A. Yes, sir.

Q. In a few words, briefly, what was it?—A. He asked him if he would accept the attorneyship for the receiver, and I think he told him what the receivership was. I did not pay any particular attention because it was no affair of mine. What Mr. Short said I could not tell except that Mr. Hunter gave me to understand that he would accept it.

Q. Mr. Leake, was that the full extent of everything and anything that you did in regard to the appointment of Mr. Hunter as receiver?—A. Absolutely the last thing I had to do with it.

Q. Did you receive 1 cent of any compensation that Mr. Hunter received as receiver in that matter?—A. Not 1 cent.

Q. Did you receive as much as 1 cent of any fees paid to Messrs. Short and Keyes & Erskine in that matter?—A. Not 1 cent. As just stated, I do not know the two Mr. Erskines. I do not think I would know them if I would see them.

Q. Do you know G. H. Gilbert?—A. I do.

Q. Do you know his wife?—A. I do.

Q. What has been the length of your acquaintanceship with them?—A. With Mr. Gilbert, in our line of business, we knew each other before we met, in the telegraph business. I have known him personally for a number of years; I do not know just how long.

Q. How long have you known his wife—about, not to be exact?—A. About the same time that I have known him.

Q. Have they both been patients of yours?—A. They have and are yet.

Q. How long, without being exact, how many years back has each been a patient of yours?—A. Mrs. Gilbert a number of years; Mr. Gilbert not so long.

Q. Do you know either member of the firm of Dinkelspiel & Dinkelspiel? I do not mean the father, who has passed away, but the two sons.—A. I have never seen either one of them to know it.

Q. Do you know Marshall Woodworth?—A. I do.

Q. How long have you known him?—A. I knew of him when he was a messenger boy in Judge Hoffman's court. I have known him very well for a number of years, particularly since the time he was United States district attorney.

Q. That is, for the Northern District of California?—A. Yes, sir.

Q. The same position to which Mr. McPike has just been appointed?—A. Yes, sir.

Q. Do you know Samuel M. Shortridge, Jr.?—A. Yes, sir.

Q. How long have you known that gentleman?—A. I saw him, I think, 1 or 2 days after he was born. He was born in the Palace Hotel, where I lived.

Q. Has he at times been a patient of yours?—A. Yes, sir.

Q. Having in mind all the gentlemen that I have mentioned, did you ever receive as much as a single cent from any one of them out of any fees received by any of them, either as receivers or attorneys for receivers?—A. Not 1 cent, sir.

Q. During the 5 years that Judge Louderback has been Federal judge, have you ever made any suggestion to him in regard to the appointment of any receiver except in the case of Mr. Hunter?—A. Not one.

Q. It is in evidence here that in some 6 or 7 matters, while Judge Louderback was a judge of the superior court, he appointed you receiver in certain cases. Do you recall that?—A. Yes, sir; I recall it. They were very small cases.

Q. Do you recall generally, without going into details, the character of the cases in which you were appointed?—A. Well, they were small things pertaining to apartment houses.

Q. What was the outside figure, the aggregate figure, that you received as receiver in all of those cases?—A. There were some cases in which I did not receive anything; but, all told, it would not exceed a thousand dollars. I do not think it would come very close to it.

Q. Were you appointed by Judge Louderback as one of the appraisers in the Brickell estate, so called?—A. It was some estate of that name. I am not positive about the name.

Q. Do you recall what the inventory value of that estate was, in round numbers?—A. I could not at this time, because it has been sometime ago, and it was a matter that I did not register it enough, did not think enough about it, to.

Q. With whom, if anyone, did you confer in regard to that appraisement?—A. A Mr. Hogan—Mogan; Mogan.

Q. Was he the State appraisement officer?—A. As I understood.

Q. When you signed that inventory did you have any talk with him about it?—A. Yes, sir.

Q. Go on in your own way, but as briefly as possible, and state what he said to you on that subject.—A. My recollection is that I had 2 or 3 conferences with him, and we

went over his valuations and figures. I questioned him about the accuracy of them—not the accuracy of them but the judgment of things—and got what information I thought was necessary to justify me in signing the papers.

Q. What, if anything, did he say to you on the subject as to whether or not he had examined into and appraised each item of that estate?—A. He did. He was very particular about that and was perfectly willing to go over them, or take me to them, and let me examine them for myself.

Q. Did you make any suggestion to him as to the amount that you should receive as one of the appraisers in that estate?—A. I did not.

Q. Who was it that fixed the amount that should be allowed to the appraisers, if you know? A. I understood——

Mr. LONG. Mr. President, I just want to find out what case they are talking about.

Mr. LINFORTH. The estate of Brickell.

Mr. LONG. In the United States court?

Mr. LINFORTH. No; a State matter.

Mr. LONG. Mr. President, what has a State matter to do with this case? I want to make an objection, if it is in order to make one. I object to going into the State practice in this case.

Mr. LINFORTH. Mr. President, in view of the suggestion from the Senator, we will not go further into that subject.

Mr. Manager SUMNERS. Mr. President, we want to suggest, if we may, that the attorney for respondent should not be deterred from going into the case by reason of the suggestion, because we propose to go into it.

The VICE PRESIDENT. The Chair thinks that it is better practice. However, the counsel can pursue his own method.

Mr. LONG. Mr. President, my attention has been called to the fact——

The VICE PRESIDENT. The Chair will overrule the objection of the Senator from Louisiana if the counsel desires to go on with the case.

Mr. LINFORTH. Then, Mr. Leake, I will ask you but a couple of questions on that subject.

By Mr. LINFORTH:

Q. Did you fix or suggest the amount that you should receive as appraiser in that matter?—A. I did not.

Q. How much did you receive?—A. My recollection is that I received $500.

Q. I hand you a photostatic certified copy of the inventory and appraisement in the matter of the estate of Howard Brickell, and I call your attention to the signature "W. S. Leake", and ask you if that is your signature?—A. Yes, sir.

Q. I call your attention to the page of the inventory where the item reads:

To services in appraising foregoing, — days at $5 per day each, services and costs, $1,750.

Did you fix or determine that amount?—A. I did not.

Q. Did you have anything to do with fixing or determining that amount?—A. None whatever.

Q. I call your attention to the page of the inventory where the total estate is appraised at $1,020,804.38, and ask you if that refreshes your memory as to the value of that estate?—A. It does.

Mr. LINFORTH. At this time we offer in evidence, as part of the testimony of the witness, the inventory just referred to.

Mr. Manager PERKINS. Mr. President, it is all printed in the record here now, at page 296, under exhibit no. 7.

Mr. LINFORTH. That may be understood. I do not care to ask that it be printed in the RECORD. I offer it, and it can be referred to at the place in the record to which the honorable manager has referred.

The VICE PRESIDENT. The Chair understands that counsel offers it to be submitted without being printed.

Mr. LINFORTH. Yes, Mr. President.

The VICE PRESIDENT. Very well.

(The inventory was marked "U.S.S. Exhibit G.")

By Mr LINFORTH:

Q. One further question, Mr. Leake: Did you at any time telephone to Mr. Short at his residence at Woodside?—A. I did.

Q. Can you fix the time that you telephoned to him?—A. It was, I think, about 1 year before Mrs. Leake's death.

Q. And what was the object of that telephone message?—A. My wife was calling for Mrs. Hathaway, and I was trying to locate her.

Q. At that time was she desperately ill?—A. She was.

Mr. LINFORTH. You may take the witness.

Cross-examination by Mr. Manager PERKINS:

Q. Mr. Leake, how long since you have been engaged in any business?—A. I sold out the business that I was conducting some time after the close of the war.

Q. So that since the close of the war you have not been engaged in any business whatever?—A. Not a business; no, sir.

Q. When did you first occupy room 26, Fairmont Hotel?—A. I do not recall. I occupied the adjoining room for a while.

Q. Please confine your answers to the questions.—A. I will try, sir.

Q. Was it before the month of September 1929—A. I could not say.

Q. How many years have you known Mr. Gilbert?—A. Well, as I have stated, I felt that I knew him before we met; but I have known him a number of years. We became quite friendly.

Q. How many years has he been in the habit of contributing to you money?—A. Only since he became a patient of mine.

Q. Did he contribute money to you in 1928?—A. I do not recall the date he commenced coming to me.

Q. Can you fix for us the date when he became a patient of yours?—A. I cannot.

Q. Was it more than 4 years ago?—A. I guess his wife was a patient at that time, but I do not recall just when he—(the witness did not finish).

Q. Was Mr. Gilbert a patient of yours in 1929?—A. I think so.

Q. And after 1929 did he contribute money to you?—A. I do not remember the dates. The only money he contributed to me was $150. His wife paid me as she went along.

Q. How often did Mrs. Gilbert contribute money to you?—A. Well, just as she felt like it. I do not know how long.

Q. Many times?—A. Well, frequently, yes, small amounts always.

Q. Beginning as early as the year 1929?—A. I would say yes, to the best of my memory.

Q. Since the year 1929 Mrs. Gilbert has frequently contributed money to you?—A. I would not say very frequently.

Q. I did not say very frequently, but you said frequently.—A. Well——

Q. Is that correct?—A. She contributed whenever she felt the disposition. I had no charge against her.

Q. Did you not call up John Douglas Short from your room on the evening of March 11, 1930?—A. I have no recollection of calling Mr. Short from my room at any time, except——

Q. Was anyone——

Mr. LINFORTH. One minute. Let the witness answer.

The WITNESS (continuing). Except the time when I called inquiring for Mrs. Hathaway, and I do not know the date of that.

By Mr. Manager PERKINS:

Q. You remember when Mr. Hunter called Mr. Short from your apartment, do you not?—A. I do not remember the date.

Q. If I should say that it was March 13, the date of his appointment, would that refresh your memory?—A. Well, if that was the time, he came to me the evening he was appointed, and he telephoned from the room at that time.

Q. He was appointed on March 13, and he came to your room on that date, and from your room telephoned to Mr. Short. Is that correct?—A. Yes, sir.

Q. And that was an out-of-town call, was it not?—A. Yes.

Q. Did you not call from your room 2 days before, and call Mr. Short on the long-distance telephone?—A. I have no recollection of it, sir.

Q. Was anyone else in your room on the 11th of March, 2 days previous to Mr. Hunter being appointed?—A. It would be impossible for me to tell. I have a great deal of company.

Q. Do you know who called Mr. Short from your room on the day or evening of March 11, 2 days before Mr. Hunter called?—A. No.

Q. How long have you been intimately acquainted with Mr. Hathaway?—A. We were boys together in Sacramento.

Q. How frequently has Mr. Hathaway contributed to you since 1929?—A. I do not know just how often. Are you referring to money that I borrowed?

Q. I am referring particularly to the $250 which he says he gave to you.—A. Yes, sir.

Q. Do you remember that gift?—A. Yes, sir.

Q. Did Mr. Hathaway contribute other moneys to you?—A. I do not recall of any. If he did, it was very small amounts.

Q. Have you had a bank account in the last 5 years?—A. No, sir.

Q. You have done your banking in cash in the Fairmont Hotel, have you not?—A. Yes, sir.

Q. When Mr. Hathaway loaned you $1,000, did he lend it to you by check or in cash?—A. My recollection is he gave it to me in cash.

Q. In fact, all of your deposits in the Hotel Fairmont have been made by you by cash, have they not?—A. No, sir.

Do you know of any checks you have deposited in the Fairmont Hotel in the last 4 years?—A. Yes, sir.

Q. What checks?—A. Any specific check? I can give you the names of people who have contributed to me by check, but the dates I could not tell you.

Q. Have you any recollection of any checks which you deposited with the Fairmont Hotel in the last 4 years?—A. I could not name any specific check, but I know that I have.

Q. Mr. Hathaway gave you $1,000 in cash, or loaned it to you, did he not?—A. Yes, sir.

Q. Have you ever repaid it?—A. I paid 1 year's interest; I have not been able to pay the principal yet.

Q. The $250 about which you have spoken was a contribution to you without intention of repayment, was it not?—A. Yes, sir.

Q. How frequently has Mr. Samuel Shortridge, Jr., visited your office in the last 4 years?—A. Quite often when he was a patient of mine.

Q. And he has contributed money to you, has he not?—A. He contributed personally $1,000.

Q. And his wife contributed money to you also?—A. He has no wife that I know of.

Q. You know Mr. Woodworth, do you not?—A. I do.

Q. He was a frequent visitor to your office, was he not?—A. I would not say frequent. He came whenever he felt like it.

Q. You maintained an office there in San Francisco, did you not?—A. I did.

Q. And Mr. Woodworth contributed money to you at your office in San Francisco, did he not?—A. Mr. Woodworth never contributed any money to me.

Q. Was he not a patient of yours?—A. No, sir.

Q. How frequently did Samuel Shortridge, Jr., contribute money to you in the last 4 years?—A. Only one time, and that was on account of what I had done for his mother.

Mr. Manager PERKINS. I object. I have not asked any question. The witness is volunteering.

Mr. LINFORTH. Just a moment. I submit the answer of the witness was proper, and it was in explanation.

The VICE PRESIDENT. The answer of the witness may go in the record.

By Mr. Manager PERKINS:

Q. How long have you been an intimate friend of Judge Louderback?

Mr. LONG. Mr. President, I did not hear the explanation the witness gave.

The VICE PRESIDENT. Does the Senator desire to have the witness repeat his answer?

Mr. LONG. I should like to know what it was.

The VICE PRESIDENT. The Official Reporter will repeat the answer.

The Official Reporter read as follows:

Q. How frequently did Samuel Shortridge, Jr., contribute money to you in the last 4 years?—A. Only one time, and that was on account of what I had done for his mother.

Mr. Manager PERKINS. I will ask the reporter to read the last question.

The Official Reporter read as follows:

Q. How long have you been an intimate friend of Judge Louderback?

The WITNESS. My real acquaintanceship with Judge Louderback—while I knew him slightly—my real acquaintance dates from after the war, when he returned from the war.

By Mr. Manager PERKINS:

Q. Will you not please tell us how long you have been an intimate friend of Judge Louderback?—A. An intimate friend? I can only by relating instances; but as to giving dates, I cannot do that.

Q. Have you been an intimate friend of his for the last 6 years?—A. Yes, sir. I do not know what you mean by "intimate." We have been very friendly.

Q. "Intimate" means very close relationship.—A. Yes, sir.

Q. Is that right?—A. I have been intimate enough with him to trust him, and he seemed——

Mr. Manager PERKINS. I object, because I have not asked for the witness' explanation of the word "intimate", and I ask that that be stricken from the record.

By Mr. Manager PERKINS:

Q. Do you recall, Mr. Leake, your employing a detective named Mr. Ramigie to shadow Mrs. Louderback, wife of the respondent?

Mr. LINFORTH. We object to that as being utterly immaterial to any issue here and not cross-examination.

The VICE PRESIDENT. The Chair is of the opinion that this jury will consider the evidence, and that what the opinion of the witness may be will not have very much influence on this jury. The witness may go ahead and answer the question.

The Official Reporter read the last question, as follows:

Q. Do you recall, Mr. Leake, your employing a detective named Mr. Ramigie to shadow Mrs. Louderback, wife of the respondent?

The WITNESS. No, sir.

By Mr. Manager PERKINS:

Q. Did you not ever pay Mr. Ramigie money for work of that character?—A. Not for the watching of Mrs. Louderback.

Mr. LINFORTH. Mr. President, may I have the answer read? I did not hear it.

The VICE PRESIDENT. The reporter will read the answer.

The Official Reporter read the last answer.

By Mr. Manager PERKINS:

Q. Did you, at the request of the respondent, employ a detective named Ramigie?—A. I did not.

Q. Did you do it on your own volition?—A. Whatever transaction I had with him was personal.

Q. Did you employ him in connection with any affair of the respondent?—A. I was trying to ascertain who was following him, or if there was anybody.

Mr. Manager PERKINS. Mr. President, I did not understand the answer. May I have it repeated?

The VICE PRESIDENT. Will the witness repeat the answer, please?

The WITNESS. Give me the question again.

The Official Reporter read as follows:

Q. Did you employ him in connection with any affair of the respondent?

The WITNESS. Any affair of his? I did it on my own responsibility.

By Mr. Manager PERKINS:

Q. What you say is that you employed this detective to find out who was shadowing Judge Louderback?—A. I had heard that such a thing was being done, and I wanted to know who was doing it, if anybody.

Mr. Manager PERKINS. Mr. President, that is all of the cross-examination.

Mr. LINFORTH. Just a question or two.

Redirect examination by Mr. LINFORTH:

Q. How long had the mother of Samuel M. Shortridge, Jr., been a patient of yours before her son made the statement to you to which you have referred?—A. A great many years.

Q. In carrying on the work you do, do you make any charges at all?—A. None whatever.

Q. Is your remuneration whatever the patient sees fit to donate to you?—A. Just whatever they give, and no more.

Mr. LINFORTH. Mr. President, there is one matter which I overlooked in the direct examination.

By Mr. LINFORTH:

Q. Since the death of your wife, have you received moneys on life-insurance policies?—A. Yes; since and before.

Q. Did the moneys you received on life-insurance policies go from time to time into this Fairmont Hotel account?

Mr. Manager PERKINS. I object to the form of the question. It indicates the answer required.

The VICE PRESIDENT. It is not necessary to lead the witness.

Mr. LINFORTH. I am leading on purpose, on account of the condition of the witness, and in order to make the matter as brief as possible. If the objection is made, I will reform the question.

By Mr. LINFORTH:

Q. In the making of deposits to your account in the Fairmont Hotel in the last 3 years, from what sources have you obtained the moneys you have deposited there?—A. Money contributed by friends, sale of my books, money that I borrowed, and money borrowed on my life insurance; and finally, on the passing of Mrs. Leake, I collected the full amount, whatever was due.

Mr. LINFORTH. No further questions, Mr. President.

Mr. CONNALLY. Mr. President, I desire to ask a question.

The VICE PRESIDENT. The Senator from Texas propounds a question, which the Clerk will read.

The Chief Clerk read as follows:

Q. Did you testify that you had employed a detective to ascertain who, if anyone, was following Judge Louderback?

The WITNESS. I did.

Q. If you have so testified, what was the name of the detective?

The WITNESS. "Louie" is about the only name I ever knew of him; "Louie" something—Ramager.

Recross-examination by Mr. Manager PERKINS:

Q. From what company did you borrow money on your life-insurance policy?—A. I think it is called the "New York Equitable".

Q. When did you borrow that?—A. I borrowed $1,500 some time ago.

Q. How long ago?—A. Quite a few years ago.

Q. Mr. Leake, do you designate yourself a metaphysical student?—A. A metaphysical student and practitioner.

Q. You are not connected with any organization, are you?—A. No, sir.

Mr. Manager PERKINS. I think that is all.

Mr. CONNALLY. Mr. President, I desire to ask another question.

Mr. LINFORTH. Mr. President, may I ask one further question?

By Mr. LINFORTH:

Q. After the death of your wife did you borrow any further amount on that life-insurance policy?—A. I borrowed all that was due.

Q. How much was that, in round numbers?—A. About $3,800.

The VICE PRESIDENT. The Senator from Texas propounds a question, which the clerk will read.

The Chief Clerk read as follows:

Q. At whose instance did you employ such detective?

The WITNESS. My own volition.

Q. How much was he paid, and who paid him?

The WITNESS. I do not know just what amount. Whatever amount it was, I paid it.

By Mr. LINFORTH:

Q. Mr. Leake, when you borrowed money from the Equitable Life Assurance Society it was one transaction and one borrowing, was it not?—A. Let me see what you mean. I borrowed first on my life insurance when my wife was alive. When she passed away I then drew the balance that was due on that, which was $3,800.

Q. Since the death of your wife you have only borrowed once, and that was after you borrowed the total cash-surrender value of the policy? Is that right?—A. On the insurance?

Q. Yes.—A. That is all I could borrow.

Q. Have you any other sources of income than those you have mentioned?—A. No.

Mr. LINFORTH. That is all.

Mr. KING. I desire to submit a question.

The VICE PRESIDENT. The Senator from Utah submits a question, which will be read.

The Chief Clerk read as follows:

Q. Were these persons who made contributions, referred to by the managers, your patients?

The WITNESS. Yes.

Mr. ROBINSON of Arkansas. Mr. President, I submit a question.

The VICE PRESIDENT. The Senator from Arkansas submits a question, which the clerk will propound.

The Chief Clerk read as follows:

Q. Did you have any special reason for keeping your funds at the hotel and not in a bank?

The WITNESS. No; it was handier for me; what I got came in such small amounts. I had a safe in my office, and when I accumulated a sufficient amount, I deposited it in the hotel.

The VICE PRESIDENT. Are there any further questions of the witness?

Mr. POPE. I desire to ask a question.

The VICE PRESIDENT. The Senator from Idaho propounds a question, which will be read by the clerk.

The Chief Clerk read as follows:

Q. Why did you employ the detective?

The WITNESS. I had my doubts about anybody following; but, if anyone was, I wanted to know what the object was. I did it as a friendly act.

The VICE PRESIDENT. Are there any further questions?

Mr. ASHURST. I wish to ask the honorable managers on the part of the House and the honorable attorneys for the respondent if they have any further questions to ask Mr. Leake. We wish to know now, because of his desire to go home.

Mr. Manager PERKINS. The managers on the part of the House have no further questions unless they are induced by questions of counsel for the respondent.

The VICE PRESIDENT. Are there any further questions?

Mr. ASHURST. I will ask that they be propounded now if there are any further questions to be asked.

Mr. LINFORTH. The respondent is through with the examination of the witness.

The VICE PRESIDENT. Then the witness may depart for his home so far as the court and Chair are concerned.

Mr. Manager PERKINS. May I ask for one moment's delay?

Mr. ASHURST. I do not know whether or not an order is necessary, but, if necessary, I ask for an order releasing the witness, so that he may return to his home when he pleases.

The VICE PRESIDENT. The Chair thinks that if the announcement is made in the presence of the court, that the witness may depart for home; there is no necessity for any further proceeding.

Mr. ASHURST. I join in that opinion.

Mr. LINFORTH. May I add, so that there will be no misunderstanding, that I was advised that the witness was in a train wreck on the way over and that he desires to rest in bed a day or two in Washington before leaving. I apprehend there is no objection to him doing so.

Mr. ASHURST. None whatever.

Mr. Manager PERKINS. On the part of the managers, there is no objection; but we want it distinctly understood that he is not going to be again recalled.

The VICE PRESIDENT. That is understood, the Chair thinks. Is that correct?

Mr. LINFORTH. We are through with the examination of this witness.

The VICE PRESIDENT. The witness may remain in the city or elsewhere so long as he pleases. The witness will retire.

(The witness thereupon retired.)

PRESIDING OFFICER FOR THE DAY

The VICE PRESIDENT. The Chair appoints the Senator from Indiana [Mr. ROBINSON] to preside for the day.

(Thereupon Mr. ROBINSON of Indiana took the chair as Presiding Officer for the day.)

REDIRECT EXAMINATION OF G. H. GILBERT

Mr. LINFORTH. Mr. President, when we took our recess last Saturday the witness Gilbert was under cross-examination. I ask now if his cross-examination was concluded. If so, we have a few questions on redirect.

Mr. Manager PERKINS. Mr. President, at the time Mr. Gilbert left the stand it was indicated that his cross-examination had not been concluded. Mr. Manager SUMNERS was conducting the cross-examination. At the present moment he is in the Supreme Court chamber.

The PRESIDING OFFICER. Is the Chair to understand that counsel for the respondent desire now to examine this witness further?

Mr. LINFORTH. The witness is right here, and we have a very few questions to ask, and should like to examine him if that is agreeable.

The PRESIDING OFFICER. Is there objection to that?

Mr. Manager PERKINS. We think the cross-examination should be concluded before there is redirect examination.

The PRESIDING OFFICER. Why should we not save time, may the Chair suggest to the managers on the part of the House, by letting counsel for the respondent go ahead and examine the witness?

Mr. Manager PERKINS. We will consent to that.

Mr. Manager BROWNING. With the understanding that we will have the right to recall him when Mr. Manager SUMNERS returns for additional recross-examination.

The PRESIDING OFFICER. The Chair thinks there is no objection to that. Let the witness be summoned.

G. H. Gilbert, having been previously sworn, was examined further and testified as follows:

By Mr. LINFORTH:

Q. Mr. Gilbert, just a question or two: Did you fix the amount of your fee as appraiser in the Brickell estate?—A. No, sir; I did not.

Q. Who did?—A. That was fixed by Mr. Mogan, the State inheritance-tax appraiser.

Q. Did you make any suggestion to him whatever as to the amount which you should receive as appraiser?—A. No, sir; I did not.

Q. When you signed the inventory, did you know what the fee was going to be?—A. No, sir; I did not.

Mr. LINFORTH. That is all of the witness.

ADDITIONAL CROSS-EXAMINATION

The PRESIDING OFFICER. Do the managers on the part of the House desire to cross-examine the witness?

Mr. Manager PERKINS. I will cross-examine on the particular questions and will then reserve the witness for Mr. Manager SUMNERS.

By Mr. Manager PERKINS:

Q. You knew that you were putting in a bill for $5 a day, did you not?—A. No, sir; I did not know that at the time.

Q. Did you not make affidavit in connection with your bill?—A. I signed the appraiser's oath.

Q. Please answer the question responsively.

Mr. LINFORTH. Just a moment. I submit the witness has answered the question.

The PRESIDING OFFICER. Let the question be repeated.

The Official Reporter read as follows:

Q. Did you not make affidavit in connection with your bill?—A. I signed the appraiser's oath.

Mr. Manager PERKINS. I said in connection with the bill, not in connection with the oath of appraiser.

Mr. LINFORTH. One moment. We object to the question upon the ground that it is without foundation, and it does not appear that the witness ever presented any bill.

The PRESIDING OFFICER. The Chair thinks the question is competent, although, strictly speaking, perhaps it is not.

Mr. Manager PERKINS. The bill appears in evidence as exhibit 7.

The PRESIDING OFFICER (to the witness). Answer the question if you can.

The WITNESS. Not before a notary.

Q. Before whom did you swear to it?—A. I signed it in the presence of Mr. Mogan, the State inheritance-tax appraiser.

Q. You knew that bill was for $5 a day, did you not?—A. I do not know that I really knew that. I may have.

Q. Did you read the bill before you signed it?—A. I probably did.

Q. Does it not say?—

Estate of Howard Brickell, deceased, to R. F. Mogan (inheritance-tax appraiser), W. S. Leake, and G. H. Gilbert.

To services in appraising foregoing, ——— days at $5 per day each, services and costs, $1,750.

And you signed that, did you not?—A. I signed that, but there was no amount fixed at the time.

Q. You mean to say that $5 was put in afterward?—A. No; I may have read the stipulation of $5.

Q. You knew that you were entitled to $5 per day for services as appraiser, did you not?—A. I may have; yes, sir.

Q. Did you not sign the paper?—A. I probably did.

Q. Well, say so if it is true. You did, did you not?

Mr. LINFORTH. Just a moment. We want to object to the form of the question as improper.

The PRESIDING OFFICER. Objection is sustained.

By Mr. Manager PERKINS:

Q. You knew that you received money for 100 days' services, did you not?—A. I did not know what I was to be paid.

Q. I object to the answer; it is not responsive. I said you knew when you received the money that you received it for 100 days' services, did you not?—A. I probably did.

Q. And you knew that you rendered no services, did you not?—A. Yes, sir.

Mr. Manager PERKINS. That is all.

Mr. LINFORTH. We have no further questions.

The PRESIDING OFFICER. The witness will stand aside. Is the Chair to understand that it is the desire to have the witness cross-examined further later?

Mr. Manager PERKINS. Yes; there was a reservation that this witness would return.

The PRESIDING OFFICER. The witness will stand aside. Who is the next witness?

EXAMINATION OF JOHN DOUGLAS SHORT

Mr. LINFORTH. Please call John Douglas Short.

John Douglas Short, having been duly sworn, was examined and testified as follows:

By Mr. LINFORTH:

Q. Would you please state your name, age, occupation, and residence?—A. My name is John Douglas Short, I am an attorney at law, and my residence is Woodside, San Francisco.

Q. How long have you been an attorney at law?—A. I was admitted to practice in 1916.

Q. When did you become associated with Keyes & Erskine?—A. In the year 1928.

Q. Prior to that had you been following the practice of your profession from the time of your admission?—A. Yes. I first was associated with Mr. C. Irving Wright. We formed a partnership soon after I was admitted to practice. We then formed an association, a group of us, with Andros & Hinkler. My partner, Mr. Wright, shortly afterward had to retire from business due to his health and I remained on in that association for several years. Mr. Walter Hepman was also a member of that association, and he and I later formed a joint office arrangement and practiced until I joined Keyes & Erskine in 1928.

Q. Did you state your age?—A. I am 38 years old.

Q. Are you a man of family?—A. I am married and have four children.

Q. Do you know the witness, W. S. Leake?—A. I do.

Q. How long have you known him?—A. I met him some time in 1927 or 1928.

Q. Would you state as briefly as possible the extent of your relations and associations with him?—A. I do not remember the occasion of meeting him, but it was sometime in the lobby of the Fairmont Hotel when myself or my family with me had gone to visit my wife's family who lived there.

Q. Are you a son-in-law of Mr. Hathaway who has been referred to here?—A. I am.

Q. Was it during a visit to your wife's family that you became acquainted with Mr. Leake?—A. Yes; my acquaintance with Mr. Leake has been wholly casual. I have only met him in the hotel on a few occasions, probably not over six to a dozen times since I first met him.

Q. Are you acquainted with Mr. Hunter who was appointed receiver in the Russell-Colvin case?—A. Yes.

Q. Would you state the extent of your acquaintanceship with him?—A. I first met Mr. Hunter in 1920 at the residence of my former partner, Mr. Wright, down at Pebble Beach. I have known him ever since. We have always been good friends. I met him professionally when he was receiver for the Security Bond & Finance Co. A client of the firm of Keyes & Erskine was one of the stockholders of that concern and we defended them in a stockholders' liability suit. Mr. Hunter as receiver was in court on a number of occasions then. Later, when he was associated with the bank for which the firm Keyes & Erskine were attorneys, I met him occasionally then. We lived near one another when I lived across from the Fairmont Hotel and we met socially occasionally. We were not intimate, but we were good friends.

Q. Did you meet him during his connections with the firm of Cavalier & Co., for whom Keyes & Erskine were attorneys?—A. Yes; I met him during that period on several occasions also.

Q. How long have you known Judge Louderback?—A. I met him merely as an attorney in his court on a few occasions.

Q. How long have you known him?—A. I think I first met him in 1928. I handled a matter for Keyes & Erskine in his court, a case of patent litigation.

Q. Have you ever had any relations of any kind with Judge Louderback except the usual relations of attorney and judge?—A. None whatever.

Q. Have you ever been a political friend of his?—A. No.

Q. How many appointments did you receive as attorney for receivers appointed by Judge Louderback during the 5 years that he acted as Federal judge?—A. We were appointed as attorneys in the Stempel-Cooley matter, a real-estate bankruptcy matter. Mr. Gilbert was appointed receiver. We acted in the matter for 2 or 3 months, and a trustee was appointed and we were out of the case.

Q. Are that and the Russell-Colvin matter the only matters in which you have been appointed as attorneys for receivers appointed by Judge Louderback during the entire time he has been on the Federal bench?—A. Yes.

Q. Were you ever appointed by him in any capacity during the 8 years he was on the State bench?—A. No. I was never in his court.

Q. Are you acquainted with Mr. Gilbert, who has been a witness here?—A. Yes. We represented him as attorney for the receiver in the Stempel-Cooley matter.

Q. Was that your first acquaintance with him?—A. Yes.

Q. Have you at any time since represented him in any matter?—A. No.

Q. What was the fee allowed in the Stemple-Cooley matter?—A. The fee was allowed by Judge Sheridan, to whom the matter was assigned. He was the referee in bankruptcy. He conducted the few hearings had and fixed the fees. I think it was $500 for the receiver and for the attorney.

Q. What is the business of your father-in-law, Mr. Hathaway?—A. He is manager of the Mutual Life Insurance Co. of New York for northern California, Nevada, and the Hawaiian Islands.

Q. Did you ever give or loan any money to W. S. Leake?—A. Never; no.

Q. When did you first learn that your father-in-law had loaned him a thousand dollars?—A. At the time of the committee hearings in San Francisco in September of last year.

Q. On the 27th of March 1931 did you owe your father-in-law any money?—A. I did.

Q. How much did you owe him?—A. I owed him $2,435 for moneys he had advanced me during the period of approximately a year prior to the time I repaid it.

Q. Were those advances made to you by check?—A. They were.

Q. On what bank?—A. On the Crocker First National Bank.

Q. Have you those checks here with you?—A. Yes.

Mr. LINFORTH. We tender them to counsel on the other side if they wish them.

By Mr. LINFORTH:

Q. On the 27th of March, 1931, did you owe your father-in-law any other money?—A. I did.

Q. How much?—A. I owed him $3,651, I think is the amount—yes; it is—on a transaction connected with his deeding to us a property at Woodside, on which we agreed that we would build a home and pay him the balance then due on the property he was purchasing. He prepared a memorandum and gave it to me at that time, and I agreed to take care of it when I could.

Q. Do you remember the date of the deed to that property by the father of your wife?—A. It was the first part of 1927, the first of the year, I think.

Q. Have you that deed here with you?—A. Yes.

Mr. LINFORTH. We tender it to opposing counsel if they desire it.

By Mr. LINFORTH:

Q. When did you receive your fee in the Russell-Colvin matter?—A. Within a day or two of the date I paid Mr. Hathaway the $5,000, between the 20th and the 27th.

Q. Upon receiving your fee did you pay back to your father-in-law the money he had loaned to you?

Mr. Manager PERKINS. I object. That is a leading question. I object to the form of the question.

Mr. LINFORTH. I withdraw the question. I was merely trying to hasten matters.

Mr. Manager PERKINS. While haste is desirable, indicating to the witness the answer desirable is not desirable.

Mr. LINFORTH. There was no such intention on my part.

The PRESIDING OFFICER. Proceed, gentlemen. The question has been withdrawn.

By Mr. LINFORTH:

Q. Did you accompany the checks to your father-in-law with a letter?—A. I did.

Mr. LINFORTH. May I ask of the learned managers if they have with them a copy of the printed exhibits?

Mr. Manager BROWNING. Which exhibit?

Mr. LINFORTH. The printed volume of exhibits which you had printed and to which you referred the other day. Never mind; a copy of it is now in my possession.

We offer at this time the letter referred to by the witness, which is printed in the RECORD volume of exhibits at page 887, and we ask permission to read it for the benefit of the court.

Mr. Manager PERKINS. We think the original letter should be produced for examination by the managers on the part of the House.

The PRESIDING OFFICER. Do managers on the part of the House deny the existence of the letter?

The WITNESS. Mr. SUMNERS has the original letter.

The PRESIDING OFFICER. In the interest of progress, the Presiding Officer would think if this is an exact copy of the letter that the copy itself might be used. Of course, the best evidence is the letter itself.

Mr. LINFORTH. Mr. President, may I add that the original letter was given to the investigators on behalf of the House when they were in California in September and they have the original letter and we have their receipt.

The PRESIDING OFFICER. If that be true, then the letter cannot be in the custody of counsel for the respondent.

Mr. Manager PERKINS. Then we have no objection to the copy. I did not know that was the fact.

The PRESIDING OFFICER. Let the letter be read.

Mr. LINFORTH. For that reason we offered the printed copy. The letter is as follows:

LAW OFFICES OF KEYES & ERSKINE,
March 27, 1931.

Mr. W. L. HATHAWAY,
San Francisco, Calif.

DEAR MR. HATHAWAY: We have finally received our compensation to date in the Russell-Colvin & Co. matter, and I can now take up at least a part of my obligations to you. The record in my two check books shows the following advances made me by you:

October 1929 (Crocker Bank)	$200
December 1929 (Crocker Bank)	100
February 1930 (Crocker Bank)	100
June 1930 (Crocker Bank)	60
October 1930 (Bank of Italy)	100
December 1930 (Bank of Italy)	100
January 1931 (Crocker Bank)	1,500
Do	75
	2,235

I also have a note in my bill file stating that I owe you "$500 for advances in 1929", which indicates that there is $200 due in addition to the first two items above. If your records do not show this, we can correct it later.

Mr. Manager LEWIS. May I interrupt? The idea is to save time. This is all in the printed record, under Exhibit 32, at page 511 of the record of this trial.

Mr. LINFORTH. It is very brief, and I want it to lay a foundation for what follows.

The PRESIDING OFFICER. The Chair thinks it would be just as well to let it be read.

Mr. LINFORTH (reading).

In addition to these advances there is our understanding in respect to the 12½ acres you deed us at Woodside, that I should reimburse you for the balance remaining due on that portion of your purchase from the Spring Valley Water Co. in accordance with the memorandum you prepared at the time we arranged to build our house. The balance arrived at was $3,651.61.

I am inclosing my check for $5,000 of which $2,435 is in repayment of your advances as above, and the rest is on account of the Woodside property, which leaves a balance on this account of $1,086.61.

Sincerely yours,

DOUGLAS.

By Mr. LINFORTH:

Q. Did you personally deliver that letter to your father-in-law?—A. I did.

Q. I hand you a bunch of canceled checks. Are these the checks showing the advance to you of $2,435 referred to in that letter?—A. Yes; these are the checks.

Mr. LINFORTH. We offer the checks, and state that they need not be printed in the record unless it is so desired.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The checks were marked "U.S.S. Exhibit H.")

The WITNESS. I might explain, in connection with that, that at the time I delivered the check of $500 with this letter to Mr. Hathaway he stated, "You do not owe me this amount." I said, "Well, I insist on paying you the amount of the balance due on the Woodside property." He stated to me at the time that at the time that he had deeded the adjoining property to his other daughter it had been free and clear, and he wanted to treat the two girls alike. Therefor, he said, "You do not owe me this, and I will not accept it; but I will take it as a loan and return it to you, as I need it, because I am going to use this money immediately on my ranch properties down here, which I am improving and building on."

By Mr. LINFORTH:

Q. And did he subsequently return to you the difference between the twenty-four hundred and odd dollars and the $5,000?—A. He did; all of it.

Q. You referred in that letter to a statement in which he had figured the balance due on the Woodside property at $3,657.61. Is the paper I show you that statement?—A. Yes. This is the memorandum Mr. Hathaway prepared and gave me at the time, before he delivered us the deed.

Q. Are those figures in the handwriting of your father-in-law?—A. They are.

Mr. LINFORTH. We offer that paper, and we do not care about it being printed in the RECORD.

(The paper was marked "U.S.S. Exhibit I.")

By Mr. LINFORTH:

Q. I hand you a deed from Caro L. Hathaway and W. L. Hathaway to Marie Hathaway Short, of date the 10th of January 1927. Is the grantee in that deed your wife?—A. Yes.

Q. The daughter of Mr. Hathaway?—A. Yes.

Q. Is this the deed by which the 11 acres that you have referred to were deeded to you?—A. It is.

Mr. LINFORTH. We offer the deed, and do not care about its being printed in the RECORD.

(The deed was marked "U.S.S. Exhibit J.")

By Mr. LINFORTH:

Q. When did you first hear of your appointment in the Russell-Colvin case?—A. I first heard of the matter of our acting as attorneys from Mr. Hunter, who phoned my residence the night of March 13, said he had been appointed as receiver of the Russell-Colvin Co., and said he wanted us to act as his attorneys. He said at the time that it was necessary to take charge the following morning, and he would like that I should meet him early, as early as 8:30, if possible; so I told him that I felt we should be very glad to represent him, and I phoned that I would speak to Herbert Erskine and Morse Erskine in the morning and try to keep an engagement with him at that hour.

I called Mr. Herbert Erskine, told him about it, and arranged to meet in the morning; and he and Morse Erskine and myself discussed it, and said we would give Mr. Hunter every possible service, and be very glad to undertake the work.

I went to Mr. Hunter's office at Cavalier & Co., had a brief discussion with him, and then we went over to the Russell-Colvin office and met Morse Erskine there and took charge of the estate.

Q. Did you have any talk of any kind at any time with Mr. Leake about your appointment as attorneys in that matter?—A. I did not.

Q. Or with Judge Louderback?—A. No.

Q. You are familiar with the statement of services which has been offered in evidence in this matter—the statement of services of the attorneys?—A. Yes.

Q. Without going over the matter, is the statement, insofar as it details the services rendered by you, correct?—A. There are two statements. They are both correct; yes.

There may be omissions from them, but whatever is in those is correct.

Q. The statement in evidence is the statement relating to the first application for fees. Did you subsequently file another statement on application for fees?—A. Yes; about 8 or 9 months after that we filed a second application.

Q. There was an application made separately for compensation on behalf of counsel, was there not?—A. In each instance there was an application made for the receiver's compensation and the attorneys' compensation; the first one at the end of approximately a year, and the second one about 9 months after that.

Q. I will put that second statement in evidence a little later; but I will ask you, Mr. Short, in the interest of brevity, whether the services outlined and designated in that second statement are correct of your own knowledge?—A. Yes.

Q. Will you tell the Presiding Officer and the Members of the Senate in your own way, but very briefly, how much time you and the firm of Keyes & Erskine devoted to the matters of this receivership?—A. Well, the work involved all of my—practically, I should say—all of my time for a year and 6 or 8 months; in other words, until the entire distribution was completed. It involved, for the first 3 or 4 months, practically all of the time of Morse Erskine; and thereafter, I should say, it took from one third to one half of his time for the period I have stated in regard to myself, a year and a half or more.

Q. Did you give to Judge Louderback, or did he receive, to your knowledge, one cent of what was awarded you as fees?—A. No.

Q. Or any other amount?—A. No.

Q. Did Mr. Leake receive any part or portion of your fees in that matter?—A. He did not.

Q. Did anyone except yourself and the firm of Erskine & Erskine receive any part of those fees?—A. No one else.

Q. How long have you lived at Woodside?—A. Since we built our home there in 1927.

Q. That is about 30 miles from San Francisco?—A. Yes.

Q. Do you recall ever receiving a telephone call or message from Mr. W. S. Leake?—A. I recall a telephone message from Mr. Leake on one occasion only.

Q. About what?—A. He was inquiring to reach the Hathaways. He wanted Mrs. Hathaway particularly. Mrs. Leake was asking for her, he said, and wanted to locate her. They were not in the hotel.

Q. Were the Hathaways at your home at that time?—A. They were not. I told him I did not know where they were, but if I could reach them, I would give them his message.

Q. Are you able to fix the time of that telephone call?—A. No; I do not remember the time of it. I merely remember the fact that that was the only time he ever phoned me.

Mr. LINFORTH. You may take the witness.

Mr. KING. Mr. President, I have an interrogatory.

The PRESIDING OFFICER. The interrogatory submitted by the Senator from Utah will be read.

The Chief Clerk read as follows:

Q. What services did Morse Erskine, your legal associate, render in the Russell-Colvin case?

The WITNESS. He was particularly active in the beginning in handling matters concerning the general estate. The thing that we had on hand that required immediate attention was the contract with Mr. Blumberg for the purchase of the Consolidated Box controlling stock; and Mr. Morse Erskine—who was a director of the United Paper Box Co., and the firm were attorneys for that concern, a competitive concern with the Consolidated—was able to interest Mr. Spiegelman, the president of that concern; and through his interest we were able to get an offer that eventually resulted in a satisfactory sale not only of the controlling stock but of a large block of the debentures and the machinery, which would otherwise have been almost a total loss.

He was, as I say, engaged in that work especially for those three very active months, and cooperated with me in research and investigation of the law of stock-brokerage liquidations, and assisted to a certain extent in devising the means and methods for handling the reclamation proceeding, resulting in the return to customers of their securities or proceeds and the eventual disposition of the estate. He was consulted by me constantly, and assisted in every phase of the work.

Mr. KING. I have another interrogatory.

The PRESIDING OFFICER. The interrogatory will be read.

The Chief Clerk read as follows:

Q. As I understand, the record shows that you conferred very often with the receiver. Why were so many conferences necessary?

The WITNESS. Well, that was largely due to the fact that there were so many—such a multiplicity of interests in the concern. There were several subsidiary companies. Each one had to be studied and analyzed and reported on. Then the reclamation proceedings were necessary to be handled.

In a stock-brokerage liquidation, unlike any other ordinary merchandising concern, a very complicated situation exists in which claims must first be had and filed; they must all be analyzed, compared with the books, and any discrepancies or arguments between the customers and the firm must be disposed of, either by litigation or by agreement. Once those claims are in comes the question of tracing securities, which is a very involved and difficult process, requiring legal advice at every turn and every phase of it.

We prepared a questionnaire in the beginning. We first studied the situation to a sufficient extent and analyzed the decisions in stock-brokerage liquidations until we were convinced of the proper method of procedure.

One of three methods could be followed:

We could simply have called for claims, had the court appoint a special master, had the court appoint certified public accountants to assist the special master to report on claims, and forced each claimant in an adversary proceeding to prove his claim and have the special master finally report it.

Or, as the defendants and others had originally hoped, it might be possible to sell the concern as a going concern and effect some sort of compromise, if necessary, with the customers.

The third program was the one we finally adopted, because of our discovery that in practically all stock-brokerage liquidations where they go through the formal procedure of an omnibus proceeding, in which a special master and accountants determine the claim, it would take us from 3 to 4 years to dispose of it. Mr. Hunter was anxious to get back to his employment; and we took the task with the understanding with him that we thought we could dispose of it within 6 months to a year. We fortunately were able to dispose of it in something over a year and half—a record in those proceedings.

The Wilson case was referred to here the other day when I was in the balcony——

Mr. Manager PERKINS. Mr. President, I do not know whether this is in response to an interrogation or not, but it seems to be quite a long speech.

The PRESIDING OFFICER. Is the Senator from Utah satisfied with the response to his question?

Mr. KING. I am satisfied, Mr. President.

The PRESIDING OFFICER. Very well. Then let the managers on the part of the House proceed with their questioning. Was there a further question on the part of the Senator from Utah? If so, the clerk will read it.

The Chief Clerk read as follows:

Q. What was the nature of your services?

Mr. KING. I think he has answered that sufficiently.

Cross-examination by Mr. Manager PERKINS:

Q. Mr. Short, at the time of your appointment as the attorney for the receiver of the Russell-Colvin Co. you were employed by Keyes & Erskine, were you not?—A. Yes.

Q. And you were receiving $200 a month for your services, were you not?—A. That was part of our arrangement; yes.

Q. That was all they paid you for your services, was it not?—A. They supplied me with an office, and all of the overhead expenses were paid. I was permitted to conduct any personal business I had.

Q. Did you conduct personal business?—A. Yes.

Q. How much did you charge, either by day or by hour, to your clients for your services?—A. I do not recall.

Q. Do you not have a rate of charge against your clients for services rendered for them?—A. A rate per hour?

Q. Per hour or per day.—A. No; I do not think so.

Q. So that you never charged your clients either per day or per hour for services?—A. No.

Q. You have testified that you spent practically all of your time on this thing for the first year, have you not?—A. Yes; I think that is right.

Q. When you say all of your time, you mean how many hours a day?—A. I could not say. I think there were some days when I probably spent not more than 4 or 5 hours, and some days when I spent 12 to 14 hours.

Q. You count Saturdays and Sundays in that, when you say all of your time?—A. I would not count Sundays, although we worked Sundays on occasion, sometimes Sunday nights.

Q. So that the total of your services, so far as time was concerned, was set out in the bill you presented to the court?—A. That would be the bulk of it. There were certain things which were omitted from that.

Q. Do you know how many hours you spent on this matter from March 14, the time of employment, to March 31?—A. You mean the year following?

Q. I mean the time of appointment, March 14, to the 31st of the same March.—A. That is, in the first month?

Q. Yes.—A. No; I do not know. I have never added up the hours.

Q. Do you know that your bill as set out shows you spent 66 hours in those 17 days?—A. I do not know. I have never checked it up.

Q. Do you know how many hours you spent in the month of April 1930 on this matter?—A. I do not.

Q. Do you know that your bill shows that you spent 141 hours?—A. I do not know, as I say.

Q. Do you know how many hours you spent in the month of May 1930?—A. I do not know the hours of any month.

Q. Do you know that your bill shows that in the month of May you spent 61 hours, May 1930?—A. I do not know.

Q. I have had a tabulation made showing the total of hours in each month for 1930, the date of your appointment in March, for 1 year, and it shows that the total amount of your time spent was 1,407 hours. Did you know that that was the amount of time spent?—A. In a year's time, 1,407 hours?

Q. Yes.—A. As I say, I never added it up.

Q. You say that Mr. Erskine spent practically all of his time for the first 3 months, do you not?—A. That would be my recollection; yes.

Q. Do you know that in the first 3 months he spent, from March 14 to March 31, 66 hours; in April, 82 hours; and in May, 53 hours?—A. As I say, I have never checked up the hours.

Q. Do you know that in June he spent only 21 hours; in July, 2 hours; in August, 16 hours; in September, 23 hours; and in October, 2 hours?—A. No. As I say, I have never checked it up.

Q. Which does not accord with your idea that he spent practically all of his time, does it?—A. I said he spent practically all of his time for 3 months.

Q. Do you know that in the whole year Mr. Erskine spent only 329 hours, according to the bill, on this matter?—A. I would be surprised if that were true. I would say he spent more time than that. He would be as accurate in keeping track of the hours as I was.

Q. What you were paid for was what was set out in the bill?—A. We were paid for the results obtained, I think.

Q. Why did you show the hours in the bill?—A. The hours we put in, the size of the estate, and the satisfaction of creditors who were at the hearing in court.

Q. What was the allowance made to you and Erskine & Erskine at the end of 1 year in this Russell-Colvin matter?—A. $46,250.

Q. Do you know that you and Erskine & Erskine were allowed $46,250 for a total of 1,741 hours?

Mr. McCARRAN. Mr. President, may the question be repeated?

The PRESIDING OFFICER. The reporter will read the question.

The Official Reporter read the last question.

The WITNESS. I should say that was probably—you have checked it up, and it must be about right.

By Mr. Manager PERKINS:

Q. I have checked it up, and had it certified by an expert accountant. A. You are doubtless right about the hours.

Q. Do you know that they allowed you and Erskine & Erskine at the rate of $26.60 per hour for that total time?—A. Is that what it amounts to?

Q. It does.—A. I take your word for it.

Q. What is the largest fee you ever personally received before this receivership?

Mr. LINFORTH. I object to that as being foreign to this inquiry. The question is as to the value of these services.

The PRESIDING OFFICER. What was the question?

The Official Reporter read as follows:

Q. What is the largest fee you ever personally received before this receivership?

The PRESIDING OFFICER. I suppose that, strictly speaking, it would not be competent, but the Chair overrules the objection. Let the witness answer.

The WITNESS. I have never received any very large fees. I think the largest fee I can recall receiving was $3,000 for some work in connection with handling the 401 Orchard & Land Co.

By Mr. Manager PERKINS:

Q. During the several years before this you had been borrowing considerable from your father-in-law, had you not?—A. No. For a period of practically a year prior to that I had been having trouble with my other properties, and I had considerable real estate, and it was in difficulties; I had lost tenants.

Mr. Manager PERKINS. I move that that be stricken out.

The PRESIDING OFFICER. The question and answer will be read.

The Official Reporter read the last question and answer.

By Mr. Manager PERKINS:

Q. For several years previous to your appointment as receiver you had been borrowing money constantly from your father-in-law, Mr. Hathaway?—A. No; that is not so. The first money I ever borrowed from him was approximately a year before this, and if you want the reason for it——

Q. I will ask for an explanation when I want it. On the 27th of March 1931, out of moneys received by you as attorney for the receiver of the Russell-Colvin Co., you sent Mr. Hathaway $5,000, did you not?—A. Yes.

Q. And 2 days before that he either loaned or gave to Mr. Leake a thousand dollars, did he not?—A. According to the record, and all I know of it, he loaned him a thousand dollars.

Q. And of that $5,000 your father-in-law said that you did not owe him a thousand dollars, did he not?—A. He refused to admit that I did owe him, and I insisted, and said it was too great a sacrifice for him to have made, and he returned it.

Q. He paid it back to you?—A. Yes; every cent of it.

Q. So the net result was that you did not pay the whole $5,000 to your father-in-law?—A. The net result was that I really paid him an advance and he refused to accept the balance I had fixed as the amount I owed him on the Woodside property, and said it was a gift to us. That is correct. I have the canceled checks for it if you wish them.

Mr. McCARRAN. Mr. President, I have sent an interrogatory to the desk which I desire to have propounded.

The PRESIDING OFFICER. The clerk will read.

The legislative clerk read as follows:

Q. What was the average of your annual income from legal services apart from the $200 monthly paid you by Erskine & Erskine?

The WITNESS. I should say not to exceed a thousand dollars a year. I had an independent income of about $5,000 a year at that time.

By Mr. Manager PERKINS:

Q. Was the independent income included in income from services?—A. No.

Mr. Manager PERKINS. Then I move that that be stricken out as not responsive and not competent. A man's private income from investments has nothing to do with this case.

The PRESIDING OFFICER. I think it may remain in the record. I do not see that it does any good or any particular harm.

By Mr. Manager PERKINS:

Q. Do you know the Matson Navigation Co.?—A. Oh, yes.

Q. Did you not apply for a position from them a short time before this appointment?

Mr. LINFORTH. Mr. President, we object to that as being utterly immaterial to any issue here involved, the only question being as to the value of these services, and whether or not the respondent allowed excessive fees.

The PRESIDING OFFICER. What is the theory on which the question is asked?

Mr. Manager PERKINS. We are endeavoring to show that this gentleman had practically no business and no income, that he was living on borrowed money, and that this fee was entirely excessive—out of line with anything he had ever done in his life before.

The PRESIDING OFFICER. The witness may answer.

The WITNESS. Some 2 or 3 years before this, I think, I had a talk with Mr. Bailey, a friend of mine, who was one of the officers of the Matson Co. and discussed the possibility of my going with them.

By Mr. Manager PERKINS:

Q. Getting out of the law business and going into the navigation company?—A. Yes.

Q. What did you say——A. That was before I joined Keyes & Erskine.

Q. What did you say was the total of your income the year previous to your appointment as attorney for the receiver in this matter?—A. My total income?

Q. From the law business.—A. As I said—I answered that inquiry by saying it was probably $1,000, in addition to the moneys I received from Keyes & Erskine.

Q. So that your total income for the year previous to the time you were acting as attorney for the receiver was about $3,400. Is that right?—A. Probably. It might have exceeded that. I recall several years when I had better fees than that. I have no record handy.

Q. Substantially all of the services rendered to the receiver were rendered by Mr. Short, were they not?—A. A great deal of the work was done by me. I do not think the most important work was done by me.

Q. Of the total of 1,741 hours for which this fee of $42,500 was rendered, you performed 1,407 hours, Mr. Erskine 329, and 5 were rendered by some unidentified person. Is not that correct?—A. Have you added up both the applications or just the first application?

Q. I am dealing merely with the allowance of $42,500.—A. Whatever you say on that I will admit, Mr. PERKINS, because I have never checked it. My principal services were in connection with handling the reclamation proceedings and preparing the report on claims, which you have published in your record. I think it was the first time that work was ever done in the West.

Q. Can you tell us the day you actually got the $46,500?—A. I could not tell you the day; no.

Q. It was just a few days previous to the 27th of March 1931, was it not?—A. Yes; because I know I wanted to pay Mr. Hathaway as soon as I could after getting the check. I secured a check from Mrs. Clarkson, Mr. Hunter's secretary, gave it to our bookkeeper——

Mr. Manager PERKINS. I object. I have not asked any question. The witness is volunteering, and we will get through more quickly if he will not volunteer answers.

The PRESIDING OFFICER. Just answer the questions.

Mr. Manager PERKINS. That is all.

The PRESIDING OFFICER. Has counsel for the respondent any further questions?

Mr. LINFORTH. No further questions.

Mr. TYDINGS. I have a question to propound.

The PRESIDING OFFICER. The Senator from Maryland propounds an inquiry, which the clerk will read.

The legislative clerk read as follows:

Q. How long did the attorneys who recommended your fee keep the papers, the petitions filed for the purpose of fixing the fee?

The WITNESS. Each of the attorneys who testified at that proceeding had the reports and the application for compensation, and I think at least 2 of the 3 who testified visited the receiver's office and went over the general lay-out of the work that was done in connection with the reclamation proceedings, in other words, investigated the work of tracing the securities, the work of apportioning the securities into the forty-six-odd pools, the work of drawing back all the customers' claims, and finally, summing up, said papers were in their hands for a period of 5 or 6 days.

Mr. TYDINGS. Mr. President, may I ask the Presiding Officer whether or not the record of the number of lawsuits in connection with this receivership has been put in the record?

The PRESIDING OFFICER. The Chair is not certain on that score.

Mr. TYDINGS. Were a number of separate pieces of litigation instituted?

The PRESIDING OFFICER. Will counsel for the respondent or the managers on the part of the House answer the question of the Senator from Maryland?

Mr. Manager PERKINS. We understand there were practically no lawsuits?

The WITNESS. That is correct. There were a few. I do not know when he took charge of the estate. I think there were five filed prior to the proceedings in pursuit of what we call "desperate" accounts, bad accounts; two of those were tried, and the others were settled. There was very little litigation.

Mr. TYDINGS. May I ask—I do not want to repeat the question if it has already been answered—if the character of the services rendered has been projected in extenso at any time in his testimony?

The PRESIDING OFFICER. If the Chair were stating the opinion of the present occupant of the chair, it would be to the effect that that has been gone into with this witness.

The WITNESS. I would be very glad to take the time of the court to say——

Mr. LINFORTH. It was also gone into by a witness who preceded him—Mr. Erskine.

The PRESIDING OFFICER. The Chair did not understand the statement of counsel.

Mr. LINFORTH. I say it was gone into also by the testimony of a preceding witness, a member of the firm—Mr. Erskine.

The PRESIDING OFFICER. Are there any further questions in the examination of this witness? If not, the witness is excused. The next witness will be summoned.

STIPULATED TESTIMONY OF W. L. HATHAWAY

Mr. LINFORTH. Mr. President, at this time, pursuant to the stipulation entered into by the respective parties, due to the illness of the witness, we read his testimony given at the preliminary examination held in San Francisco in September 1932, and we read the testimony of the witness W. L. Hathaway.

The PRESIDING OFFICER. Is there stipulation to that effect, the Chair will inquire of the managers on the part of the House?

Mr. Manager BROWNING. Yes; there is.

The PRESIDING OFFICER. Very well. Counsel will proceed.

Mr. HANLEY read the testimony given by W. L. Hathaway at the hearing before the special committee of the House of Representatives at San Francisco, Calif., September 6 to September 12, 1932, as follows:

W. L. Hathaway, being duly sworn by the chairman, testified as follows:

Direct examination by Mr. LAGUARDIA:

Q. Mr. Hathaway, where do you reside?—A. Fairmont Hotel.

Q. How long have you lived there?—A. About 12 years.

Q. What is your business, Mr. Hathaway?—A. I am manager for a life insurance company.

Q. Are you related to Mr. Short?—A. He is my son-in-law, married to my oldest daughter.

Q. That is John Douglas Short?—A. Yes.

Q. Do you know Mr. Sam Leake?—A. Very well.

Q. How long have you known him?—A. Oh, I have known Sam since somewhere in the eighties.

Q. Did you ever personally consult him for treatments?—A. I have talked over his system with him, I took his books and read them, and tried, generally, as I do most things I come in contact with, to know something about it. I never considered myself a patient until I read it the other day. I think Sam thought he was treating me, and maybe he was doing me a lot of good, more than I know.

Q. But you did not consult him for treatments?—A. I did not ask him to treat me; no.

Q. Now during the months of 1931 did you give Mr. Leake any money?—A. What month?

Q. During the year 1931?—A. I gave him $250; yes.

Q. I show you a check drawn by you dated April 17, 1931, and ask you if you can identify that.—A. This is a check I drew. I was leaving the next morning for my vacation in the Canadian Rockies and the Yellowstone, and I drew this check for my traveling expenses, and bidding Sam good-bye he told me the terrible condition he was in. His wife was expecting to die, and he did not know how he was going to eat or how he was going to pay his doctors, and he was very hard-up, and I gave him half of this amount, as I recall it, of this $250; that is my recollection. I told him, I said, "Sam, if this will help you, here, take it."

Q. This was in May?

Mr. HANLEY. It is the fifth month on the check. That would be May.

A. Yes; if that is the date on the check, that must be so.

(Check dated San Francisco 5-17-1931, no. 2121, on Crocker First National Bank, of San Francisco, pay to the order of cash, $500, signed by W. L. Hathaway, indorsed by Fairmont Hotel Co., and paid through American Trust Co., marked in evidence as Exhibit No. 29.)

Q. During the month of March 1931 did you give Mr. Leake any money?—A. Yes.

Q. How much?—A. I loaned him $1,000.

Q. Have you the check for this $1,000 that you gave Mr. Leake?—A. No.

Q. How did you give it to him?—A. Cash.

Q. Did he make any request that he preferred cash?—A. Yes.

Q. And also the $250, did he request cash at that time?—A. He did not request that of me at all. I did that voluntarily. He did not ask me for money. He just told me his terrible condition, and as I had helped him a short time before and was perhaps his oldest friend, and as I was going away for a 6 months' vacation, I felt a little guilty to go away and spend a lot of money on vacations and maybe he would be hungry.

Q. Did you take a note from Mr. Leake?—A. For the $1,000.

Q. Did you take it at that time?—A. Yes; I took it at that time.

Q. Is this the note?—A. Yes; that is the note. That is my handwriting. I wrote the note.

Mr. LAGUARDIA. May that be considered as marked, Mr. Chairman?

Mr. SUMNERS. That is the note itself of the witness?

Mr. LAGUARDIA. Yes.

Mr. SUMNERS. Suppose you just state the substance of the note to the reporter.

At this point appears the note. We now offer in evidence the photostatic copy of the note, which reads as folows:

U.S.S. EXHIBIT K

$1,000. SAN FRANCISCO, *March 25, 1931.*

On demand after date (without grace) I promise to pay to the order of W. L. Hathaway one thousand dollars for value received with interest at 6 percent per annum from date—until paid, both principal and interest payable only in United States gold coin.

No. —— Payable —— —— W. S. LEAKE.

(Endorsed on back of note:)

Interest of sixty dollars ($60.00) paid April 1, 1932.

We ask that it be considered the next numbered exhibit in evidence.

The PRESIDING OFFICER. Without objection, that order will be made.

Mr. HANLEY continued reading from the testimony of W. L. Hathaway, as follows:

The WITNESS. Mr. LaGuardia, Mr. Leake wrote that interest payment on the back. That is his handwriting. He asked me if I had the note. I thought he was going to pay it. I said, "Will you bring it up to my room?" and went to get the note. It was in my hotel. I had never taken it to the office. He took it and went over to his desk and come back and gave me $60 in currency with the note back again, and he had written this interest payment on the back.

Q. Are you sure it was in April of 1932?—A. Well, I assume he wrote the right date on there.

Q. As a matter of fact, wasn't it later than the month of April 1932?—A. No; I have no reason to think it was.

Q. You are sure it was April, are you?—A. Well, I don't know just why he wrote the date—do you mean it is something of recent date? No; it was not.

Q. This mark "April 1932"?—A. Yes.

Q. You are not sure whether it was May or June, are you, or July?—A. I think if there was any discrepancy in that date I would have noticed it.

Q. But you are not sure—positive——

Mr. SUMNERS. The witness has answered.

A. I would say that it was the date, without question; but to recall it to memory as the date there was nothing in the transaction that would. If the thought is in your mind that he wrote a later date there and that I knew it—no; there was nothing of that sort.

Q. Or he might have written an earlier date?—A. I think not, because he said, "That note is past due"; and I said, "Just about"; and when I looked at it I realized it was just about a year, and I said, "Sam, this was not a year note—this was a demand note"; and he said, "I thought it was to run for a year"; so it was just somewhere in the neighborhood of a year.

Q. Now, as a matter of fact, Mr. Hathaway, when this loan was made had you expectations that it would ever be paid?—A. Well, according to his interpretation of the letter, it was six thousand and some odd dollars.

Mr. HANLEY. Show it to me, please.

Mr. LAGUARDIA. I will certainly show it to you before I put it in evidence.

Q. According to the letter, there were cash advances of $2,235?—A. Cash advances; that is correct.

Q. And he gave you a check for $5,000?—A. That is right. He also offered to pay me and wanted to pay me an amount of money in connection with a property I had turned over to him that would still leave a balance of a thousand and something.

Q. That was not a loan, though. That was property that you had turned over to your daughter.—A. That we had turned over to them jointly. I proposed, however, when that was turned over, Mr. LaGuardia, to make this thing clear. They wanted a piece of property to build on at Woodside, a subdivision of an acreage I had bought from the Spring Valley Water Co., and which I had been paying on so much a year in installments. They took out one corner, 11½ by 12 acres, and said they would like it, and I finally said, "I will tell you what I will do; if you will pay the remaining money due the Spring Valley on that portion of the property, I will turn it over to you." The property had become very valuable compared with what it previously was, and that was a gift, anyway, because the price I was asking on it was small compared to its value.

The circumstance is this: I named a small amount. I am a man with a steady income but with a scheme of living that I have to live up to all the time, so this extra acreage was quite important to me. I took his formal memorandum. We had no written agreement outside of this memorandum that he gave me.

They went on and took the property that I gave to them, and when they came to build they did not have money enough to carry out the building scheme if they had to return me this money, and so I mortgaged a piece of property here in this city and paid off the Spring Valley so I could give them a deed to these 12 acres. Up to this time it was the intention that he should pay me back that amount.

A short time afterward my other daughter and her husband felt they would like to build on a like acreage jointly—oh, a year or so afterward—and they selected eleven and some hundredths acres. Well, they were not in very good financial condition and they could not pay me, so I gave them outright the deed to their property.

In order to adjust the thing as a family matter I proposed this: I said, "To keep what the two girls were getting equal, I will make you a present of that part also."

Q. That is, to Mr. Short?—A. Yes; that is to Mr. Short. Mr. Short was always sensitive on such matters. He felt he did not want to be taking too much from me, and while it was generally understood that I had given the two girls these two pieces of property, Short showed that the first time he had some money he wanted to repay it, and insisted—wrote this note you have there and brought it to me, and when he brought it to me I said, "Douglas, that thing stands." "Well", he said, "it has been embarrassing. Everybody has heard that 'father gave the girls property.' Now, take at least that part of it." I said, "I won't accept it that way, but I have got to borrow money. I have a

building program going on at my ranch that is going to require about $5,000 more money than my income would look out for in a few months, and it requires it." I said, "If you can give me $5,000 over and above what you owe me—loan me $5,000 over and above what you owe me"—which he could not, because we had figured it out. So I got from him about $2,500, as you will see—twenty-five hundred and some odd dollars, and the other twenty-five hundred, if you will look in my bank account.

I went and borrowed from the Crocker Bank, because you know it took that $5,000 to look out for my building program and pay up the bills, so that was the way that statement came from Mr. Short.

Q. So that the overpayment was after you had offered to give him the property the same as you did the other daughter?—A. Yes. He said, "I won't accept it that way." I said to him, "I won't accept the money. Now, I will take it as a loan, and if you need money again——" Well, it run on, and when he got to that period that seems to come to my young people ever so often—I don't know how it is, but they come to father. I did not urge him to pay it back, but when a few months went by he came in and he needed some money, and gradually I have paid it all back. I have more than paid that off, and he owes me several hundred again. It is one of these family matters that is not run exactly like a bank would.

Mr. HANLEY. I think this letter ought to go in evidence.

Mr. SUMNERS. All right, let it go in.

Mr. HANLEY. I think it is a very nice letter from the son-in-law to the dad. No objection to it going in? I am offering it.

(Letter admitted and marked "Exhibit 30.")

Mr. LAGUARDIA. Anything you offer will go in.

Mr. HANLEY. It is dated March 27, 1931, and addressed to Mr. W. L. Hathaway, Hunter-Dulin Building, San Francisco, Calif.

Mr. SUMNERS (interrupting). Just put it in the record.

Mr. HANLEY. Some letters got lost. I want it in the record. [Reading:]

MARCH 27, 1931.

Mr. W. L. HATHAWAY,
Hunter-Dulin Building, San Francisco, Calif.

DEAR MR. HATHAWAY: We have finally received our compensation to date in the Russell-Colvin & Co. matter, and I can now take up at least a part of my obligations to you. The record in my two check books shows the following advances made me by you:

October 1929 (Crocker Bank)	$200
December 1929 (Crocker Bank)	100
February 1930 (Crocker Bank)	100
June 1930 (Crocker Bank)	60
October 1930 (Bank of Italy)	100
December 1930 (Bank of Italy)	100
January 1931 (Crocker Bank)	1,500
January 1931 (Crocker Bank)	75
	2,235

I also have a note in my bill file stating that I owe you "$500 for advances in 1929", which indicates that there is $200 due in addition to the first two items above. If your records do not show this, we can correct it later.

In addition to these advances there is our understanding in respect to the 12½ acres you deeded us at Woodside, that I should reimburse you for the balance remaining due on that portion of your purchase from the Spring Valley Water Co. in accordance with the memorandum you prepared at the time we arranged to build our house. The balance arrived at was $3,651.61.

I am enclosing my check for $5,000, of which $2,435 is in repayment of your advances as above and the rest is on account of the Woodside property, which leaves a balance on this account of $1,086.61.

Sincerely yours,

DOUGLAS.

By Mr. LAGUARDIA:

Q. Subsequent to that letter, this conversation about giving the property and accepting the surplus as a loan took place?—A. Subsequently.

Q. It was after this letter from Douglas?—A. He brought that letter over to the office.

Q. And then you had the conversation?—A. And then we had the conversation. He said he wanted to pay me. I told him I would accept the difference as a loan. That was on that date, I imagine, or the day after. I don't know what the exact date is.

Mr. LAGUARDIA. May I have the committee's permission to return this note, or may I have it at this time entered in evidence?

Mr. SUMNERS. It is sufficiently in the record. It is sufficiently identified.

Mr. LAGUARDIA. I return it to you, Mr. Hathaway.

(Note returned to Mr. Hathaway.)

Thus ends the stipulated testimony.

Mr. Manager SUMNERS. Mr. President, may I ask counsel for the respondent a question in order to get a matter clear?

The PRESIDING OFFICER. There is no objection to the question being asked, if counsel is willing to answer it.

Mr. Manager SUMNERS. The question I want to ask is, without going into detail, what is the difference indicated that Mr. Hathaway said he would receive as a loan? Have you figured that out?

Mr. HANLEY. It is a question of arithmetic. I have not figured it out yet.

STIPULATED TESTIMONY OF MRS. CARO L. HATHAWAY

Mr. LINFORTH. Mr. President, at this time we offer an agreed statement as to what Mrs. Hathaway would testify to if present, opposing counsel having stipulated that such course might be followed. It is very brief and I read it as follows, it being contained in the statement marked "U.S.S. Exhibit L":

My name is Caro L. Hathaway. I am, and for many years past have been, the wife of William L. Hathaway. For more than 14 years past we have lived at the Fairmont Hotel, San Francisco. Mr. and Mrs. W. S. Leake were living there at the time we commenced to reside there, and Mrs. Leake continued to live there down to the time of her death, November 15, 1931, and Mr. Leake has continued to live there until the present time. Almost immediately upon beginning to live at the hotel I became acquainted with Mrs. Leake and a very warm and intimate friendship grew up and existed between us. In March 1931 Mrs. Leake was desperately ill and bedridden. She had been ill continuously for more than a year prior thereto and this desperate illness of hers continued down to the time of her death. In March 1931 she had day and night nurses in attendance and several doctors. During this time and for some time prior and subsequent I saw her nearly every day, and shortly prior to March 25, 1931, she confided in me the inability of her husband to meet these doctors' and nurses' bill and other expenses incident to her illness. Mr. Leake also advised me of their desperate financial condition and immediate need for help.

My husband had a policy of insurance on his life in the Mutual Life Insurance Co. of New York. I was the beneficiary in this policy. On or about March 25, 1931, I joined with my husband in an application to that company for a loan of $1,000. This was granted. On March 25, 1931, my husband brought me a check or draft issued by the Mutual Life Insurance Co. for $1,000, being check or draft no. 53636, payable to my husband and myself. My husband endorsed the check and I also endorsed it, telling him to get the money and deliver it to Mr. Leake. All of this was done so we could make a loan of $1,000 to Mr. Leake, and was done by me due to my affection for Mrs. Leake and on account of their then embarrassed financial condition, and for no other reason.

On the making of this loan to Mr. Leake, he gave to my husband his promissory note for $1,000. This note has not been paid and neither has the amount we borrowed from the life-insurance company. The reason that this sum was borrowed upon the insurance policy was because at that time neither my husband nor myself had sufficient money on hand to comply with the request of Mr. Leake for the loan of $1,000.

STIPULATION AS TO TESTIMONY OF GERALD W. MURRAY

Mr. LINFORTH. We now offer, Mr. President, the stipulation entered into by counsel representing the other side while in San Francisco relating to the testimony of the witness, Gerald W. Murray. That stipulation is entitled in this matter, and is as follows, omitting the reading of the title:

U.S.S. EXHIBIT M

In order to avoid the necessity of Gerald W. Murray, cashier, San Francisco branch of the Mutual Life Insurance Co. of New York, appearing in person as a witness upon the trial of the above-entitled matter, it is stipulated as follows:

That if present at the trial of said proceeding before the Senate of the United States sitting as a court of impeachment, the said Gerald W. Murray would testify as follows:

1. That on or prior to March 25, 1931, William L. Hathaway and his wife, Caro L. Hathaway, made application to the Mutual Life Insurance Co. of New York for a loan of $1,000 on policy 2129807, theretofore issued and then in force on the life of William L. Hathaway.

2. That such loan was granted, and on March 25, 1931, the Mutual Life Insurance Co. of New York issued its check or draft therefor, no. 53636, for $1,000, payable to the order of William L. Hathaway-Caro L. Hathaway, a photostat of said check, marked "1", being hereto annexed.

3. That the photostat hereto annexed, marked "2", is the loan statement to which the said check was attached.

4. That the said Murray, at the request of William L. Hathaway, cashed said check at the Crocker Bank, being the bank where the Mutual Life Insurance Co. of New York has its account in San Francisco, and thereupon delivered to the said William L. Hathaway the said $1,000 he had obtained upon the cashing of said check.

5. That no part of said loan has been repaid, as shown by the records of said insurance company.

That the said subpena already served upon the said Gerald W. Murray may be withdrawn.

Attached to the stipulation is a photostat of the check, showing that it is made payable to the order of William L.

Hathaway and Caro L. Hathaway, and endorsed "William L. Hathaway", "Caro L. Hathaway", and by the witness, Gerald W. Murray. Annexed to it also is a photostat of the loan agreement made at the time.

We offer the stipulation and ask that it be marked as the next exhibit in order.

EXAMINATION OF WILLIAM L. GLASHEEN

Mr. LINFORTH. If Mr. Edwards is here, we will call him; if not, the witness Mr. Glasheen.

William L. Glasheen, having been duly sworn, was examined and testified as follows:

By Mr. LINFORTH:

Q. Will you please state your name, residence, and occupation?—A. William L. Glasheen; San Francisco; division traffic superintendent of the Western Union Telegraph Co.

Q. How long have you occupied that position with the Western Union Telegraph Co.?—A. Since 1921.

Q. Do you know the witness, G. H. Gilbert, who has been appointed receiver in some of these matters?—A. Yes, sir; I do.

Q. How long have you known him?—A. Since 1897, I believe—about 25 or 26 years.

Q. At the time you first met him was he connected with the Western Union Telegraph Co.?—A. Yes, sir; he was.

Q. During your acquaintanceship with him how long did he continue in the employment of that company?—A. His service was continuous.

Q. Continuously?—A. Yes, sir.

Q. Down to what time?—A. I think his furlough expired in August 1932.

Q. When did he obtain the furlough that you have referred to?—A. I believe it was February 17 or 18, 1932.

Q. So that continuously from that time you became connected with that company down to February 1932 he was connected with it?—A. Correct.

Q. During the last 10 years of his service there, what was his official position?—A. He was night traffic manager.

Q. And, as night traffic manager, what were his hours?—A. From 4 p.m. until midnight.

Q. And what were his duties?—A. Well, he had charge of the entire operating department—general supervisor, you might say. He had entire charge of all of the different departments in the operating room.

Q. In that capacity, did he have any employees under him?—A. Yes; he did.

Q. How many?—A. Approximately 150; sometimes a little less, and sometimes more.

Q. You were his immediate superior officer, were you?—A. No, sir; I was not.

Q. Were you a superior officer of his?—A. Yes, sir.

Q. How did he discharge his duties in the capacity in which he was at the time that he took the furlough you have referred to?—A. His work was very satisfactory.

Q. Did you find him efficient?—A. Yes, sir.

Mr. LINFORTH. We have no further questions.

Cross-examination by Mr. Manager SUMNERS:

Q. What was the business of Mr. Gilbert when you first knew him?—A. He was a telegraph operator.

Q. When did he become traffic manager?—A. He was appointed night traffic manager I believe in 1918.

Q. And continued in that capacity until he was relieved from duty by the furlough?—A. Correct.

Q. Is his furlough still extended?—A. I beg your pardon?

Q. Is his furlough still in operation?—A. No, sir; it is not.

Q. What happened to that?—A. At the expiration of his furlough he failed to return to duty, and he was written off.

Q. Do you know why he failed to return?—A. No, sir; I do not.

Q. Who was his immediate superior?—A. Traffic Manager Mifka.

Q. He was general traffic manager?—A. He was the traffic manager of the San Francisco office. He was in full charge of it for 24 hours a day.

Q. And he had under him a day manager and also Mr. Gilbert, the night manager?—A. Well, in the daytime he had a number of assistants, but he was the only one that held the title of traffic manager during the day tour. There were 3 traffic managers—1 day, 1 night, and 1 late night.

Q. What were Mr. Gilbert's duties?—A. Well, they are rather difficult for me to describe.

Q. I do not mean to go into detail.—A. He had an assistant, the chief operator, for example, in charge of the automatic department, and likewise a man with a similar title in charge of the Morse department, and another one, a lady, with that title in charge of the telephone department, and another in charge of the service department; and he had a wire chief and a repeater chief under him.

Q. He had to do mainly with the mechanical operation of your branch, did he not?—A. No; it would not be "mainly." It would be more a general supervision, to see that the traffic moved promptly.

Q. I think you must have misunderstood my question. He had to do with the traffic operations, did he not?—A. Yes, sir; he did.

Q. That is to say, when a message came in at night he had responsibility to see that the message got out promptly to the party to whom it was consigned?—A. Well, let us put it this way: He was in charge of the entire office, and he had about 150 people working under him.

Q. You put it that way once before; but I am trying to find out what the 150 did.

Mr. LINFORTH. Just a moment, Mr. President. We protest against counsel interrupting the witness in the middle of an answer when the answer is responsive.

Mr. Manager SUMNERS. Yes; I will not interrupt, either, when the answer is responsive.

The PRESIDING OFFICER. Some latitude must be allowed on cross-examination.

By Mr. Manager SUMNERS:

Q. What did he do with these people?—A. What did Mr. Gilbert do?

Q. Yes; that is what I asked you. What did he do?—A. Well, he did not do anything. He was in charge of the office. The organization was such that all of these men knew where to report in their respective departments. They reported to their department head.

Q. What I am trying to find out is, what did he direct these people to do?—A. I do not know just exactly what question you are asking me. I do not know how to answer that. I can tell you what his duties were.

Q. All right; tell me those. Tell me what his duties were.—A. He went around to the different departments, if he did his job correctly, and talked to his assistant chief operator, and observed generally to see that all of the employees were attending to their work, and naturally he must have frequently scrutinized the pile of telegrams to see that they were moving promptly; and, if they were not, to go to the assistants to see why they were not.

Q. The question I asked you a moment ago was if he did not have to do with keeping the messages properly moving to the parties to whom they were respectively directed?—A. Yes; he was in charge of that, to see that all——

Q. I am asking you a specific question. That was part of his duties, was it not?—A. Yes.

Q. What were his other duties?—A. That was practically all.

Mr. Manager SUMNERS. That is all.

Mr. McKELLAR. Mr. President, I send a question to the desk.

The PRESIDING OFFICER. The Senator from Tennessee propounds an interrogatory, which the clerk will read.

The Chief Clerk read as follows:

Q. What salary did Mr. Gilbert receive from the telegraph company?

The WITNESS. $255 a month.

The PRESIDING OFFICER. Are there any further questions? If not, the witness will be excused. Summon the next witness.

EXAMINATION OF GEORGE N. EDWARDS

Mr. LINFORTH. Please call Mr. Edwards.

George N. Edwards, having been duly sworn, was examined and testified as follows:

By Mr. LINFORTH:

Q. Mr. Edwards, you also have been confined in the hospital since you reached Washington?—A. I have.

Q. Can you hear me distinctly? I ask you that because I understood your operation in the hospital was on the ear.—A. Yes; I can.

Q. If you do not hear me distinctly, do not hesitate to say so. What is your occupation and where is your residence?—A. Where is my what?

Q. Residence.—A. My occupation is fruit and vegetable canner. My residence is Berkeley, Calif.

Q. Were you the receiver in the Golden State Asparagus case, so called?—A. I was.

Q. How did you become receiver in that matter? Will you briefly state?—A. I was selected by the committee—creditors' committee—to take charge of the Golden State affairs, and after I had been there about 3 or 4 days some complications arose regarding the bank that held collateral, warehousemen's receipts secured by a certain amount of collateral, also a second mortgage covering the balance of the property.

Q. Mr. Edwards, may I be pardoned for interrupting? I just want at this time to ask by whom were you selected as receiver?—A. By Judge Louderback.

Q. At whose recommendation were you selected?—A. The American Can Co.

Q. The American Can Co., the plaintiff in the case?—A. Yes, sir.

Q. Represented by what firm?—A. Lawyers?

Q. Yes.—A. Chickering & Gregory.

Q. Before you were appointed, did the American Can Co. and its representatives make any arrangement with you as to what your compensation should be?—A. They did.

Q. What, per month, was that arrangement?—A. $1,000.

Q. And you were their appointee as receiver?—A. Yes, sir.

Q. And at their request Judge Louderback appointed you; is that right?—A. Yes, sir; I understand so.

Q. Did you talk with Judge Louderback as to who you should have as your attorney?—A. No.

Q. Let me repeat my question, Mr. Edwards, in case you did not get it. What talk, if any, did you have with Judge Louderback as to who should be the attorney for you as receiver?—A. Well, I will have to go back in order to explain it a little bit.

Q. Will you do it, but do it briefly?—A. Well, when they applied out there for a receivership, the judge said that we could have either the attorney or the receivership, and we decided—the attorneys decided—on the receivership. Then the judge said that he would appoint an attorney, that he would not appoint any particular one, but he would give us a list of attorneys, would give me a list of attorneys, and I could choose one from them. So the next day I went out there to see the judge in his chambers, and he asked me, I believe, if I had any particular preference, and I said no, and he gave me the name of Dinkelspiel & Dinkelspiel. I might qualify that by saying that I did not know that I would have to take the matter up with Mr. Fox as to who would be a competent attorney to handle the matter, so he gave me the name of Dinkelspiel & Dinkelspiel and told me if they were not satisfactory to come back and he would give me another one. So I took that name down to Mr. Fox, of Chickering & Gregory, and he told me that he did not think we could have any better firm acting.

Mr. LINFORTH. Mr. President, may I have the latter part of the answer read?

The PRESIDING OFFICER. The reporter will read.

The Official Reporter read as follows:

So the next day I went out there to see the judge in his chambers, and he asked me, I believe, if I had any particular preference, and I said no, and he gave me the name of Dinkelspiel & Dinkelspiel. I might qualify that by saying that I did not know that I would have to take the matter up with Mr. Fox as to who would be a competent attorney to handle the matter, so he gave me the name of Dinkelspiel & Dinkelspiel, and told me if they were not satisfactory to come back and he would give me another one. So I took that name down to Mr. Fox, of Chickering & Gregory, and he told me that he did not think we could have any better firm acting.

By Mr. LINFORTH:

Q. Did you then go to Dinkelspiel & Dinkelspiel, after getting that opinion from your own lawyer?—A. I did.

Q. Did you employ them as your counsel?—A. I did.

Q. Were they your counsel during the entire receivership?—A. Yes, sir.

Q. State in a few words what assistance or cooperation you got from them, and whether it was satisfactory.—A. Well, I could not state in a very few words the assistance I got from them. I got their whole-hearted cooperation. For the first 6 or 8 months I was in communication with them every day, I would say. From my point of view I considered them a very efficient and competent firm.

Q. When it came to the question of an application for fees for yourself and for the attorneys, was that taken up by you gentlemen with Chickering & Gregory, the attorneys for the American Can Co., the plaintiff in the suit?—A. It was.

Q. Did they make any objection to the amount of the fees to either one of you?—A. No.

Mr. LINFORTH. Take the witness.

Cross-examination by Mr. BROWNING:

Q. Mr. Edwards, if I understand you correctly, when you were appointed receiver, Judge Louderback told you at that time he would give you a list of attorneys from which you could choose one. Is that correct?—A. Well, I would not say "give me a list." I think there were two attorneys and myself there; and I just understood that it was not just going to be any individual attorney that he would pick out; it would be a number of ones we could choose from. Whether he actually told me he would give me a list or not I do not know.

Q. In other words, you thought you were going to have a number of legal firms submitted to you to choose from?—A. Yes, sir.

Q. When you actually came back to get the designation of your attorney, how many did he give you?—A. One.

Q. Who was that?—A. Dinkelspiel & Dinkelspiel.

Q. And you went back to Mr. Fox and asked him whether they would do?—A. Yes, sir.

Q. And at that time Mr. Fox told you that was about as good as you could do, did he not?—A. Yes, sir.

Q. In other words, he said to you at that time that that was as good as the judge would give you?—A. No; he did not say it in that way. He said that he did not know a better firm of attorneys in San Francisco—I think those were his exact words—to handle a case of this character.

Q. When did you pay Dinkelspiel & Dinkelspiel their fee in this case?—A. I have never paid them the entire amount.

Q. How much have you paid them?—A. Up to date?

Q. Yes.—A. $5,000.

Q. When did you pay that?—A. Oh, at different times. I do not think I paid them over $500 at any one time. As I had surplus funds on hand, I would give them a check for $500.

Q. Do you know the dates of those checks?—A. I do not.

Q. Have you any way of finding out what it is?—A. Yes, sir.

Q. Could you do it today?—A. No, sir.

Q. Why have you not paid all of the fee in that case?—A. I have not had the funds available for that purpose.

Q. Did you have any money in the estate at all at the time this fee was allowed?—A. Yes, sir.

Q. Why was it not paid at that time?—A. Well, we had quite a few obligations outstanding which I created, and I did not want to take that out until after we had taken care of these other outstanding obligations.

Q. Has the receivership run at a profit or at a loss?—A. Up to date?

Q. Yes.—A. I would say it broke about even.

Q. Have the creditors gotten anything?—A. The secured creditors have.

Q. Have the general creditors gotten anything?—A. You mean the unsecured creditors?

Q. Yes.—A. The unsecured creditors have not.

Q. How much obligation do you owe to these unsecured creditors?—A. About $300,000.

Q. Did the secured creditors get their money out of the sale of property on which they had the security?—A. Some of them did and some of them did not.

Q. How much of them did not, but were paid from the funds of the operation?—A. Offhand, I would say about $50,000.

Q. Can you approximate the date on which these fees were paid to Dinkelspiel & Dinkelspiel?—A. One of the first payments was made shortly after the court allowed it. The last one I made was just before I left for the East.

Q. How much was the last one you paid?—A. $500.

Q. How much was the first one you paid?—A. I am not sure, but I think it was $500. It may have been a thousand.

Mr. Manager BROWNING. That is all.

Mr. DILL. Mr. President, I desire to submit a question.

The PRESIDING OFFICER. The Senator from Washington propounds an interrogatory, which the clerk will read.

The Chief Clerk read as follows:

Q. What salary or income did you receive per month previous to your appointment as receiver?

The WITNESS. $750 a month.

Mr. DILL. I submit another question.

The PRESIDING OFFICER. The clerk will read the question.

The Chief Clerk read as follows:

Q. How much money were you paid?

The WITNESS. By whom?

Mr. DILL. By the receiver, of course.

By Mr. Manager BROWNING:

Q. I think the member of the court means as receiver, out of the estate in which you have served.—A. I have been paid $750 a month since I have been acting.

Q. How many months have you served?—A. Since September 1930.

Mr. DILL. Mr. President, I understood the witness to say that he would receive a thousand dollars a month as receiver. My question was how much he was receiving in his own private business previous to his appointment. I do not know that he understood my question.

The PRESIDING OFFICER. With that explanation of the interrogatory, let the witness answer, if he can.

The WITNESS. I was employed by the Hunt Bros. Packing Co. I had been running my own business from 1916 to 1926. I sold out my business to the Hunt Bros. Packing Co. in 1926. They wanted me to stay with them, and I was simply spending my spare time around there. I did not have any particular job, and they paid me $750 per month as a sort of retainer. In addition to that, I had my own income of probably $15,000 a year.

The PRESIDING OFFICER. Are there any further questions to be asked the witness?

Redirect examination by Mr. LINFORTH:

Q. You said that during the receivership you paid off the secured creditors. How much did you pay them off, in round numbers?—A. About $300,000.

Q. I understood you to say that your attorneys told you that you could not get a better firm than Dinkelspiel & Dinkelspiel for this particular work. Was that the reason why you did not go back to the judge to get any other name?—A. It was.

Mr. Manager BROWNING. I do not think his reason that he would want to give for his action at that time would be competent.

The PRESIDING OFFICER. The Chair does not think it does any harm. Let it stand in the record.

By Mr. LINFORTH:

Q. One further question: Did you give to Judge Louderback, or to anyone else, any part or portion of the fees that you have received as receiver in this matter?—A. I did not.

Mr. LINFORTH. I have no further questions.

The PRESIDING OFFICER. If there be no further questions on the part of the managers of the House, the witness will be excused. Let the next witness be summoned.

STIPULATED TESTIMONY OF MAX THELEN

Mr. LINFORTH. Mr. President, under stipulation entered into by opposing counsel, we now read the testimony of the witness Max Thelen, given at the preliminary hearings in San Francisco in September 1932.

The PRESIDING OFFICER. Do the managers upon the part of the House agree to this stipulation?

Mr. Manager BROWNING. Yes, sir.

The PRESIDING OFFICER. Very well; then the testimony will be read.

Mr. HANLEY read the testimony given by Max Thelen at the hearing before the special committee of the House of Representatives at San Francisco, Calif., September 6 to September 12, 1932, as follows:

Max Thelen, being first duly sworn by the Chair, testified as follows:

Direct examination by Mr. LAGUARDIA:

Q. Your name?—A. Max Thelen.

Q. You are an attorney and counselor at law?—A. Yes.

Q. Practicing in the State of California?—A. Yes.

Q. Where is your office, Mr. Thelen?—A. It is in the Balfour Building on California Street, corner of California and Sansome.

Q. Where is your residence?—A. Berkeley.

Q. You are familiar with certain facts of the Russell-Colvin Co. matter?—A. I am only familiar with certain facts. My firm was the attorney for the plaintiff, and my partner, Mr. Marrin, did most of the detail work, but I am familiar with certain facts of what took place.

Q. In the early stages of these proceedings did you have occasion to confer with Judge Louderback?—A. Yes.

Q. Did you make memorandums of these conferences?—A. Yes; I did.

Q. Do you require your memorandums to refresh your memory?—A. Yes; because this is very sudden. I did not realize until just an hour or two ago that I was to be called, and I thought it wise to bring this memoranda along so that my recollection might be refreshed.

Q. When were these memorandums made?—A. On the same day on which these various transactions took place.

Q. Immediately thereafter?—A. Well, there might be an hour or two intervening; just a short time.

Q. And these memorandums contained what you at that time set down as your recollection of what transpired?—A. That is correct.

Q. May I ask you to look at those memorandums to refresh your memory?

[Witness complies.]

A. I have them here.

Q. Now, by refreshing your memory, will you be good enough to relate in your own way just what transpired between you and others in the matter of the application for a receivership in equity for the firm of Russell-Colvin & Co. with Judge Louderback around the 11th of March 1930, and thereabouts?—A. The complaint in this case was filed on March 11, 1930, by my firm. We then went to the room of Judge Louderback's secretary, and arrangements were made for a conference with him at 11 o'clock. At that time——

Mr. HANLEY (interrupting). Mr. Thelen, so that the chairman will get it, the records on file show it was the 10th.

A. There were several complaints filed, Mr. Hanley.

Mr. HANLEY. All right, let's get no. 1 file.

A. We went to Judge Louderback's office at 11 o'clock. At that time there went into his office Mr. Marrin, my partner; Mr. Francis Brown; Mr. Guy Colvin; Mr. Berlinger; and Mr. Strong, of Hood & Strong; and Mr. Lloyd Dinkelspiel.

We requested—that is, the attorneys for the plaintiff—requested the appointment of Mr. Addison G. Strong as receiver, and that request was concurred in by the other counsel who were present. Mr. Strong had been particularly familiar with the affairs of the stock exchange, and had been familiar with the affairs of this particular concern, and we thought that he was well qualified to act as receiver.

Judge Louderback agreed to appoint Mr. Strong as receiver on his filing of bond in the sum of $50,000, and also the plaintiff's filing of the bond in the sum of $50,000 to protect any creditors who might be injured by the appointment of a receiver. My memorandum of March 11 then contained these remarks:

" Judge Louderback emphasizes the proposition that Mr. Strong will be an officer of the court and that he must confer with the judge in the matter of the appointment of his attorney. The judge asked Mr. Strong whether he had selected any attorney, and particularly whether he had selected any of the attorneys who were there present in the room. Mr. Strong said no, that he had not. Judge Louderback also insisted on the dismissal of case no. 2594, which had preceded case no. 2595, before the receiver should be appointed in the latter case. After leaving Judge Louderback's courtroom, the attorneys conferred, and it seemed

that it would be impossible to raise a bond of $50,000 for the plaintiff, so the attorneys returned to Judge Louderback's chambers and he thereupon consented to reduce the amount of the plaintiff's bond to $10,000."

And by this time it was 12:30. The next memorandum I have is dated March 13. It recites that about 9:20, Miss Berger, who was Judge Louderback's secretary, phoned that the judge would agree to see either Mr. Marrin or myself at 12 o'clock, and it developed later that a similar message had been sent to Mr. Frank Brown, so the three of us called on the judge at 12 o'clock and he told us—and I am referring constantly to my memorandum because I think that would be far more satisfactory. I think you understand now that I haven't the recollection of what took place several years ago. My memorandum states:

"The judge told us that he was dissatisfied with the attitude of Mr. Strong, and that he had failed to keep an engagement to return to see him the afternoon before, and that instead of that, a member of the Heller firm had called upon the judge, and then said that he regarded Mr. Strong's signature to a petition to have the Heller firm appointed as his attorney as an attempt to force the judge's hand, and thereupon the judge said that he had suggested to the receiver the possible appointment of other counsel besides the firm of Pillsbury, Madison & Sutro, or the firm of Sullivan, Sullivan & Theodore J. Roche, but that the receiver did not regard either of those suggestions favorably."

My memorandum says:

"The judge did not say anything of having mentioned to the receiver the name of Douglas Short or of Keyes & Erskine. The judge said that he had decided that he would not go along with Mr. Strong as receiver, but he had asked him to come back at 12:45, at which time he would permit him to sign a resignation which the judge had already prepared. The judge said that if Mr. Strong did not sign that, he would then immediately make an order removing Strong as receiver, and that he would serve a certified copy thereof on the receiver. The judge further said that he had given careful consideration to the selection of some other man as receiver whose ability and standing would be above reproach, and that there had occurred to him the name of H. B. Hunter, who was connected with the firm of William Cavalier & Co. The judge said that Mr. Hunter was a juror in his court and also that he had been recommended to him by Mr. Sidney L. Schwartz, who was the former president of the San Francisco Stock Exchange. The judge asked us whether we knew anything against Mr. Hunter. He gave us until 4 o'clock to make inquiries and advise him, if we so desired, concerning Mr. Hunter. We all three took the position that if any error had been committed, that it was not an error on Mr. Strong's part."

And I am again quoting from my memorandum:

"Mr. Brown pleaded for a reconsideration of the judge's decision as to Mr. Strong, but the judge would not change his mind. He said that if Mr. Strong was retained and the judge did not permit the Heller firm to be his attorneys, it would put the judge in an embarrassing position, and he said that the only way to handle the matter is to cut the Gordian knot by getting rid of Strong as receiver. The judge further said that it would be entirely agreeable to him or this firm (meaning my firm, Thelen & Marrin) to dismiss the pending proceeding, thereby getting rid of the entire matter, but our firm of course could not consent to such action for the reason that we knew that in the interest of the creditors and the partnership a receiver was necessary, and so we could not dismiss the proceeding. Judge Louderback further said that a number of names had been suggested to him for receiver and that two parties who had consulted him in the corridor had suggested the appointment of William A. Sherman, former master of the Masonic lodge in San Francisco, but the judge added he could not think of appointing Mr. Sherman for the reason that his attorneys are Joseph McEnerney and Samuel Shortridge, Jr. The judge further said that he would ask Mr. Hunter, if he decided to invite him to serve, whether any attorney had spoken to him about the matter, and that he would then let him go his own way. He further said that if Mr. Strong resigned, he would withhold notice of the action until 4 o'clock. At that time he might announce the appointment of H. B. Hunter, but that if Mr. Strong refused to resign and the judge made an order removing him, he would file such order promptly."

At 12:45 we three—that is, my partner, Mr. Marrin, Mr. Brown, and myself—left the judge with the understanding that we might communicate to him anything which we desired to say concerning Mr. Hunter prior to 4 o'clock, but as we went out we noted Mr. Strong in the anteroom, apparently awaiting his turn.

My next memorandum is likewise dated March 13, 1930, and states:

"About 1:40 that afternoon Miss Berger, Judge Louderback's secretary, phoned while I was out of the office asking that we call her about 3 o'clock, and shortly after 3 o'clock I came into the office and Miss Berger put me on Judge Louderback's phone. The judge said that he wanted me to know that Mr. Strong had first attempted to straighten out the situation and had admitted that he had done wrong, but (this is the judge's language to me) after that he did not intend to resign, and had been told by his attorneys not to resign. The judge said that Mr. Strong had stated that he considers that he owes allegiance to his attorneys and not to the court."

This action is what the judge told me. My memorandum continues—of course this is hearsay—

"The judge thereupon made and filled his order discharging him."

This is a matter that is not within my personal knowledge. Now Mr. LaGuardia, those are my only memorandums that brought on the initiation of this matter. After that, my partner, Mr. Marrin, did practically all the work that was done by our firm. But I do want to make one comment that bears on the angle of the fees of the receiver and of counsel for the receiver. I heard testimony here this afternoon that all the attorneys had agreed to those fees, and I want to make it perfectly clear that the firm of Thelen & Marrin never did agree to any fees that were requested by the receiver or his counsel or to the fees that were finally allowed by the judge. I want the record to be perfectly clear that this firm made no such agreement. I know other facts in connection with the fixing of the fees, but I don't know whether you are interested, so I have not mentioned them.

Q. You state that you did not consent to the fees asked?—A. We did not consent to any fees asked for by the receiver or by his counsel, and I can expand on that if you desire.

Q. Well now, Mr. Thelen, have you made careful inquiry as to the amount of work that was required to liquidate this partnership?—A. Well, I am sorry that I have not. My partner was very much more familiar with the affairs of the entire liquidation, and he would probably know about it, but as I say, I was in on the beginning, then he did the rest, and I just came in later toward the end.

Q. Just what is it you would like to add concerning these fees?—A. What I would like to add is this, in exemplification of the comment I made, that we had never agreed to those fees. Shortly before the matter of the fees came before the court, our firm was, of course, advised as to the demands which would be made or the requests which would be made by the receiver and by his counsel, and my partner came into the room to discuss what position our firm should take in connection with that matter. Mr. Marrin expressed the opinion that the fees that were being asked were extremely high, and he was bothered to know as to whether this firm owed an obligation to contest those fees. We analyzed the situation and came to this conclusion, as far as one of our clients, the plaintiff Olmstead, is concerned, that he was to get practically everything for which he had asked. His securities were going to be returned to him, so that he had practically no interest in the question of the amount of the fees.

We had another client who was in a different position and who did have an interest. He had a large claim. I think it was at least partly not secured, and we decided that the right thing to do was to ask that client as to what position we should take in connection with the fees that were being asked for the receiver and his counsel, and we did so and pointed out to him—that is, my partner did this—that in case we should be overruled by the court and it should be necessary finally to appeal to the next higher court considerable expense would be involved, and finally our client told us that it would not be necessary for us to take any position in opposition to those fees.

Now, furthermore, later on, when the question of fees came before the court, there were many conferences in the corridor, about which I heard some reference this afternoon, and I want to make it perfectly clear that I never agreed, either in the conferences or in this court room, to the fees that were finally fixed for the receiver and his counsel.

I have no legal interest in the matter, but I make that statement here because I considered it extremely high. I want the record to be perfectly clear on that subject.

Q. When Judge Louderback suggested to you to dismiss the petition, a previous petition had already been dismissed in this matter, had it not, Mr. Thelen?—A. Yes. There had been a former complaint, which I think had been then dismissed. In any event, before our receiver was finally appointed and qualified I believe that prior complaint was dismissed.

Q. So that the only matter before the court was the application then pending in which Mr. Strong had been appointed receiver and was officially receiver at that time?—A. That is correct.

Q. The partnership had already been suspended from the San Francisco Stock Exchange?—A. Yes; that had been done before our complaint was filed.

Q. That was common knowledge?—A. Yes; the newspapers were full of it.

Q. So that a compliance with the request of Judge Louderback to dismiss your petition, the only petition then pending, in order to eliminate an unpleasant situation, would have caused a great deal of confusion and loss to some of the creditors, would it not?—A. I did not mean to say that Judge Louderback had requested that we dismiss the complaint, but he suggested that if we dismiss the complaint the entire matter would be solvable. I don't believe he made the direct request that we dismiss it.

Q. You were in the judge's chambers, were you not?—A. That is correct.

Q. And there were several attorneys before the judge of the court?—A. That is correct.

Q. With due deference to the judge in chambers, the same as on the bench. Attorneys always so conduct themselves, do they not?—A. Yes.

Q. So that the hint was thrown out by the judge that if the complaint were dismissed it would solve all of this trouble concerning the receiver?—A. My memorandum says:

"The judge said it would be entirely agreeable to him if this firm should dismiss the pending proceeding, thereby getting rid of the entire matter."

Q. And leaving the creditors, and leaving the situation at the mercy of the partners or some of the creditors, with the firm

suspended from the stock exchange, and this information already having gone out?

Mr. HANLEY. That is argumentative. He has stated what was said.

Mr. LAGUARDIA. I think you are right.

Cross-examination by Mr. HANLEY:

Q. Mr. Thelen, on the desk of the chairman is the original petition. It shows the filing date as of the 10th day of March.—A. There may be an error of a day there, Mr. Hanley.

Q. Were you present when the papers were both filed?—A. Yes.

Q. Were they filed—the number of this case is 2595-L—"L" meaning Judge Louderback—and the former case that was dismissed was 2594-S—"S" meaning Judge St. Sure. They were filed simultaneously, were they?—A. I think that is correct.

Mr. HANLEY. I think that is all.

RECESS

The PRESIDING OFFICER. May the Chair suggest to the Senator from New Mexico [Mr. BRATTON] in the absence of the Senator from Arizona [Mr. ASHURST] that it might be well to move a 10-minute recess.

Mr. BRATTON. Mr. President, I move that the Senate take a recess for 10 minutes.

The motion was agreed to; and (at 3 o'clock and 25 minutes) the Senate, sitting as a Court of Impeachment, took a recess for 10 minutes. At the conclusion of the recess the Senate, sitting as a court, reassembled.

EXAMINATION OF SAMUEL M. SHORTRIDGE, JR.

Mr. LINFORTH. Please call Mr. Shortridge.

Samuel M. Shortridge, Jr., having been duly sworn, was examined and testified as follows:

By Mr. LINFORTH:

Q. Will you please state your name, occupation, and residence?—A. Samuel M. Shortridge, Jr., attorney at law, Menlo Park, Calif.

Q. Are you a son of the former Senator of the same name from California?—A. I am; yes, sir.

Q. Do you know the respondent, Judge Louderback?—A. I do.

Q. How long have you known him?—A. About 10 years.

Q. And what has been the extent of your acquaintanceship with him?—A. Very casual.

Q. During the time that he was judge of the State court during a term of 8 years, were you appointed to any office by him?—A. I was not.

Q. During the time he has been Federal judge, covering a period of 5 years, did you receive any appointments from him?—A. Yes, sir; two.

Q. Do two appointments cover your entire appointments during the 5 years that he has been Federal judge?—A. Yes, sir.

Q. What were those two cases?—A. H. G. Lane & Co. and the Lumbermen's Reciprocal Association.

Q. In either one, did he fix the amount of your compensation?—A. He did not in the Lane case, but he did in the Lumbermen's case.

Q. Did he receive any part or portion of any compensation awarded to you in either one of those cases?—A. He did not.

Mr. LINFORTH. You may take the witness.

Cross-examination by Mr. Manager BROWNING:

Q. What other receivership matters, Mr. Shortridge, have you had in the Federal court?

Mr. LINFORTH. One minute. We object to the question as not cross-examination and utterly immaterial to this inquiry.

The PRESIDING OFFICER. The Chair thinks that is correct. The objection is sustained.

Mr. Manager BROWNING. Mr. President, do I understand that I will not be permitted to go into anything except these two cases with this man to show his relationship with the Federal court?

The PRESIDING OFFICER. The present occupant of the chair would be bound to hold that it would not be proper cross-examination in connection with the evidence that has already been brought out by the counsel for the respondent.

Mr. Manager BROWNING. When he is presented as a witness, I understand that we have a right to test his relationship to the Federal court when that is the question involved.

The PRESIDING OFFICER. Precisely; but——

Mr. LINFORTH. May I add a word?

The PRESIDING OFFICER. Just a second. The Chair believes that the ruling is correct.

Mr. Manager BROWNING. Very well, sir.

By Mr. Manager BROWNING:

Q. What was your fee in the H. G. Lane case?—A. $10,000.

Q. When did you get that fee—what date?—A. Along in the spring of 1929.

Q. Do you know what month?—A. It was either May or June, I believe. I am not positive.

Q. Did this fee go into your firm?—A. No, sir.

Q. Where did you put it?—A. In the bank.

Q. Have you a safe-deposit box?—A. I have; yes.

Q. Did any of it go into that?—A. No, sir.

Q. In the Lumbermen's Reciprocal Association case there was an appeal taken to the circuit court on your appointment as receiver, was there not?—A. Yes, sir.

Q. The circuit court reversed the respondent in his holding that you were rightful receiver, and sent the case back to be turned over to the State commissioner, did it not?—A. Yes, sir.

Q. And an order was made by the respondent to turn the estate back to the Commissioner of Insurance for the State of California?—A. It was.

Q. Do you recall the provision in that matter——

Mr. LINFORTH. Just one moment, may it please the Presiding Officer. We submit that this is not cross-examination in any sense of the word.

The PRESIDING OFFICER. The Chair would suggest that this may have to do with testing the credibility of the witness; and counsel can go into that matter in any fiduciary relationship the witness has had, except that it must be connected with this respondent, as the Chair understands the law.

As the questions were asked by counsel for respondent, and as the Chair understands the law to be, the managers for the House may go into any question connected with this witness's relation with the respondent in connection with these receiverships; but so far as receiverships are concerned with which this respondent has nothing to do, and clear outside of the record, the Chair has ruled on that question. Therefore the objection will be overruled.

Mr. LINFORTH. Mr. President, my main thought in making the objection was in the interest of time, as I am trying to conclude today, if possible.

The PRESIDING OFFICER. The Chair is interested in that suggestion also, and the Chair is satisfied that counsel for the respondent will do the best possible to save time.

Mr. Manager BROWNING. Mr. President, the suggestion comes rather late from counsel.

By Mr. Manager BROWNING:

Q. You recall the provision in the order that it will be turned over only on condition that there would be no appeal taken from the fees awarded counsel?—A. I never saw the order.

Q. But you do know that is in the order, do you not?—A. I have been so advised since then.

Q. Appeal was taken from the allowance of fees, was it not?—A. It was.

Q. How much in fees did Judge Louderback allow to you in the Lumbermen's Reciprocal case?—A. Six thousand dollars.

Q. How much to your counsel?—A. Six thousand dollars.

Q. That was paid by you as receiver out of the assets of this concern?—A. It was.

Q. Since that time an order has been made on you, because of the partial reversal of that allowance on the second appeal, to pay a portion of the fee back, has it not?—A. I have seen something about it in the newspapers, but I have had no formal order served on me.

Q. Have you been made acquainted with the opinion that was rendered last September reversing, partially at least, the order of respondent in allowing fees?—A. I read it in the advance reports.

Q. It does what?—A. I read the opinion in the advance reports.

Q. You know that it requires a portion to be paid back?—A. So I understand.

Q. You have not returned that fee, have you?—A. I have not been called upon to do so. When I am called upon I will do so, naturally.

Q. Do you mean to say the mandate has not come down from the circuit court?—A. The last I heard of it was about 2 months ago, when I was home very ill, and I read something about it in one of the newspapers, that Mr. Guerena, the attorney for the insurance commissioner, was getting out some writ in the State supreme court.

Q. Do you not know that, at the solicitation of your counsel in that case, the respondent has made an order, since that mandate came down from the court of appeals, calling for that to be paid within 30 days from that order which he made, and that 30 days has long since expired, has it not?—A. It has; yes.

Q. What part of your fee were you asked to refund?—A. One half.

Q. And how much of your expenses?—A. You mean in percentage?

Q. In amount.—A. I think it amounted to around $2,000, I believe it was.

Q. How long have you known W. S. Leake?—A. He once told me that he first saw me when I was 2 days old.

Q. In fact, you have known him practically all your life?—A. Yes.

Q. You have been a patient of his?—A. In a way.

Q. What do you mean by "in a way"?—A. My mother has been a semi-invalid for 25 years. Mr. Leake has treated her for about 10 or 12 years. She has been in a very nervous condition, nervous prostration, and I would go to see Mr. Leake, consulting him about my mother's health, and—I guess this is off the record—but she used to ask him to have me treated, to try to have me stop smoking cigarettes.

Q. Is that the only trouble you have ever been treated for?—A. By him; yes.

Q. Did you pay him for that?—A. Yes; but he was not successful.

Q. How much money have you paid Mr. Leake for that?—A. For that?

Q. Yes.—A. Nothing.

Q. How much money have you given him over this course of years that he has been treating either you or your mother?—A. Oh, maybe $1,500.

Q. Did you pay him in cash or by check?—A. Once or twice by check, and then my mother would give me envelopes to give to him; it may have been cash in them, or it may have been a check—one of my mother's checks.

Q. But you knew it was compensation to him?—A. It was; yes.

Mr. Manager BROWNING. I believe that is all.

Mr. LINFORTH. Just one question, with your permission, Mr. President.

Redirect examination by Mr. LINFORTH:

Q. When the fee for $10,000 was allowed to you in the Lane case, what judge allowed it?—A. Referee in Bankruptcy T. J. Sheridan, sitting as a special master in equity, fixed the fee.

Mr. LINFORTH. No further question.

Recross-examination by Mr. BROWNING:

Q. That was under an appointment, though, made by Judge Louderback?—A. It was.

Mr. Manager BROWNING. That is all.

The PRESIDING OFFICER. The witness will be excused.

The witness retired from the stand.

EXAMINATION OF HARRY L. FOUTS (RECALLED)

Mr. LINFORTH. Call Harry L. Fouts.

Harry L. Fouts, heretofore sworn as a witness, was recalled and testified as follows:

By Mr. LINFORTH:

Q. Mr. Fouts, you have already testified that you are one of the deputy clerks in the ninth circuit, northern district of California?—A. That is correct.

Q. Have you examined the records to ascertain, during the 5 years that Judge Louderback has been a judge of that department, in how many cases he has appointed receivers?—A. In 10 equity cases, 16 bankruptcy cases.

Q. Have you examined the records for the purpose of ascertaining whether or not, prior to the filing in the Russell-Colvin case, there was ever a double filing made before?—A. I have.

Q. How far back did you examine the records?—A. I went back to the beginning of the equity dockets. That was about 1912.

Q. Did you find any such situation except in this one case?—A. This is the only instance it has ever been done.

Mr. LINFORTH. Take the witness.

Cross-examination by Mr. Manager SUMNERS:

Q. Have you found any double filing in bankruptcy cases?—A. No; I have not.

Q. You do not find any of the number of gentlemen who are referred to in connection with receivership or attorneyship in any but the five cases with which you are familiar, the ones to which the inquiries are being directed?—A. No; I do not believe they are connected with any of the other cases.

Q. What is the largest amount, either as a fee for attorney or as a fee for receiver, you found in the other equity cases?

Mr. LINFORTH. We object to that as not being cross-examination in any sense of the word.

The PRESIDING OFFICER. The objection will be overruled. Answer the question.

The WITNESS. The largest amount I know of for any receiver amounted to $70,000.

By Mr. Manager SUMNERS:

Q. What case was that?—A. That was in the receivership of the Western Pacific Railroad Co.

Q. Was that a case in which Judge Louderback appointed the receiver?—A. No; that was back in 1915 or 1916.

Q. That was with reference to a Pacific railroad company, was it not?—A. With reference to what?

Q. A receivership with reference to a Pacific railway company?—A. Western Pacific Railway Co.; yes.

Q. Have you a list of the 10 cases as to which you have examined the record concerning which Judge Louderback appointed receivers or attorneys?—A. I can produce a list of those cases. I have not it with me.

Q. Perhaps this would refresh your memory: Pioneer Fruit case, Fageol Motors case, Lumbermen's case, Asparagus case, Sempel-Cooley case, the Prudential case, the Russell-Colvin case, and the Sonora case. Do you remember the other cases?—A. I think three of those cases you mentioned are bankruptcy cases, and not equity.

Q. They were all instituted in equity cases, were they not?—A. No; that is not true. The Sonora case and the Sempel-Cooley case were both bankruptcy in the original filing. I think one other.

Q. Will you get a list of the cases to which you refer?—A. Yes; I can produce that.

Mr. Manager SUMNERS. That is all.

The PRESIDING OFFICER. Are there any further questions? If not, the witness will be excused.

The witness retired from the stand.

The PRESIDING OFFICER. Are counsel prepared to proceed further?

Mr. LINFORTH. I desire to ask the witness a question or two in redirect examination.

The PRESIDING OFFICER. Let the witness be recalled.

EXAMINATION OF HARRY L. FOUTS (RECALLED)

Harry L. Fouts, having been heretofore duly sworn, was recalled and testified as follows:

By Mr. LINFORTH:

Q. Mr. Fouts, opposing counsel asked you with reference to amounts allowed in receivership cases. Are you familiar with the case of the First National Bank of Medford against the Stewart Fruit Co.?—A. Yes; I am.

Q. Did you examine the record in that case?—A. I did.

Q. In that case, how much were the assets?—A. I think it is a little over a million dollars.

Q. A million ninety-four thousand; is that right?—A. That is about it.

Q. Who were the receivers in that case; do you recall?—A. E. G. Potter.

Q. How much was allowed as receiver's fees in that case?—A. If I remember right, it is about $48,000.

Q. Who were the attorneys for the receiver in that case, if you recall?—A. I think it is Pillsbury, Madison & Sutro.

Q. Merely to refresh your memory, was it Knight, Boland & Christen?—A. Yes; Knight, Boland & Christen.

Q. How much were the fees allowed to them in that case, which concerned approximately a million ninety-four thousand dollars?—A. I do not recall the exact amount now.

Q. In round numbers?—A. I think it is around forty to forty-five thousand dollars, and besides that, they were allowed $75 for every day in court, plus 10 percent of all collections made.

Q. Does it refresh your memory if I call your attention to a record where the aggregate fees were $48,606?—A. I know that it is very nearly that.

Q. That matter was not before Judge Louderback, was it?—A. No; those fees were allowed by both Judge St. Sure and Judge Kerrigan.

Mr. LINFORTH. No further questions.

Mr. Manager SUMNERS. Mr. President, it is understood that this witness is excused, with the privilege on our part of calling him tomorrow when he shall have gotten data.

The PRESIDING OFFICER. Very well. The witness will be excused, subject to being recalled tomorrow.

WITNESS MALING—SERVICE OF SUBPENA

The PRESIDING OFFICER laid before the Senate, sitting as a court, a communication from the Sergeant at Arms, which was read, as follows:

[Chesley W. Jurney, Sergeant at Arms; J. Mark Trice, Deputy Sergeant at Arms and Storekeeper]

SENATE OF THE UNITED STATES,
OFFICE OF THE SERGEANT AT ARMS,
May 20, 1933.

Hon. JOHN N. GARNER,
Vice President and President of the Senate,
Washington, D.C.

MY DEAR MR. VICE PRESIDENT: There is attached hereto a subpena for Walter G. Maling, of San Francisco, Calif., which was ordered by the Senate on May 18, 1933. The subpena has been duly served and return made according to law.

Respectfully,

(Signed) CHESLEY W. JURNEY,
Sergeant at Arms.

EXAMINATION OF WALTER G. MALING

Mr. LINFORTH. Mr. President, we should like to call Mr. Walter G. Maling.

Walter Maling, having been duly sworn, was examined and testified as follows:

By Mr. LINFORTH:

Q. Would you please state your name, your residence, and your occupation?—A. Walter G. Maling, Mill Valley, Calif.; clerk of the United States District Court for the Northern District of California.

Q. How long, Mr. Maling, have you been clerk of that court?—A. Since 1912.

Q. Continuously?—A. Continuously.

Q. Have you examined the records to determine when, if at all, before the filing of the two complaints in the Russell-Colvin case such a condition ever existed before—that is, of two filings being made?—A. I have examined the records.

Q. And did you find any?—A. I did not find one; I found no such thing .

Q. How far back did you examine?—A. I went back carefully about 4 or 5 years; and then I discussed this with my assistants, who had been there for a long time, and a number of us looked through the various dockets quite quickly, but we found no such case; and we were all satisfied, from our knowledge of the business there, that no such situation had existed before.

Q. Do you know Mr. Marrin, the attorney of the firm of Thelen & Marrin?—A. I do

Q. Did you know him at the time of the filing of the two complaints or the one complaint, the first one in the Russell-Colvin matter?—A. Well, I knew him slightly. I did not know him as well as I do some of the other counsel.

Q. Upon the filing of the first complaint in that matter, which the record here shows went to Judge St. Sure's department, did you then or at any other time tell him that no judge present would act for Judge St. Sure in such a matter during his absence?—A. I have no recollection of it, and I am satisfied that he is mistaken if he thinks I said that. He must have misunderstood me, because I never would have made such a statement to any counsel to that question or answer it in that way. I have never undertaken to say what any judge would do in the matter of making an order.

Q. According to your best recollection, no such conversation took place?—A. I am satisfied that if we had a conversation, he misunderstood my statement, because I never would have said that.

Mr. LINFORTH. Take the witness.

Cross-examination by Mr. Manager BROWNING:

Q. In checking over these equity cases, did you make a note of any of them where one judge acted for another in his absence?—A. Yes; I did note that. I noted that from the time that Judge Louderback was appointed down to the Russell-Colvin case. In those cases I looked particularly to see to whom the case was assigned and who had made the order appointing the receiver.

Q. Well, is it not a fact that each one was appointed receiver by the one to whom it was assigned?—A. From the date that Judge Louderback went on the bench up to the time that the Russell-Colvin case was filed we had only about a dozen or 15 equity receivership cases, and in all those cases the appointment of the receiver was made by the judge to whom the case was assigned. I am speaking about equity receiverships.

Q. How many did they have—how many equity receiverships?—A. I cannot tell you the exact number, but it was about a dozen or 15, I should say. I could check up on that possibly by some data that I have here.

Mr. Manager BROWNING. That is all.

The PRESIDING OFFICER. Are there any other questions? If not, the witness will be excused.

(The witness thereupon retired from the stand.)

DEPOSITION OF LLOYD ACKERMAN

Mr. LINFORTH. We now read the deposition of Lloyd Ackerman taken by consent in San Francisco.

Mr. HANLEY read the direct examination as appearing in the deposition, as follows:

U.S.S. EXHIBIT N

Lloyd Ackerman, called on behalf of Harold Louderback; sworn.

By Mr. LINFORTH:

Q. Mr. Ackerman, what is your profession, please?—A. I am an attorney at law.

Q. And you have been following that profession for a good many years?—A. Yes; I have.

Q. In San Francisco and elsewhere?—A. Yes.

Q. Are you acquainted with Addison G. Strong?—A. Yes; I am.

Q. Did you know him in the month of March 1930?—A. I did.

Q. And prior to that time?—A. I did.

Q. About the 9th of March 1930 did you have a conversation with him about your acting as his attorney in the event that he should be appointed receiver in the Russell-Colvin case, so-called?—A. I did.

Q. Where did you have that conversation?—A. It was at my home.

Q. Where was that, Mr. Ackerman?—A. I live at 3080 Pacific Avenue, San Francisco.

Q. Can you state when that conversation took place with reference to the time the order was made appointing him a receiver in that matter?—A. I am under the impression it took place the night prior to his application for appointment as receiver.

Q. And by use of the expression that you have just made that you are under the impression, is that your best recollection?—A. Yes.

Q. Will you please state what the conversation was you had with him at that time and place on that subject?—A. Mr. Strong stated that he had been selected by the San Francisco Stock Exchange to act as receiver of Russell-Colvin & Co., and that he anticipated being appointed receiver, I think it was the following day; it may have been possibly the day succeeding the following day; he said he had given the matter some thought with respect to his legal counsel, and was desirous of knowing whether I would be willing to act as his counsel.

Q. What did you say in reply, if anything?—A. I replied that I should like to give the matter some thought; that if he would give me his telephone number, I would call him on the phone that evening—I think it was Tuesday night—and let him know what my decision was. I called him back later and informed him that I would accept the appointment.

Q. Did you subsequently hear from him again on that same subject?—A. I heard from him on the following day.

Q. Was that after his appointment?—A. I think it was prior to his appointment.

Q. So that both of your conversations with him were prior to his appointment?—A. Yes.

Q. Where was the second conversation that you had with him?—A. I think it was on the telephone while I was at my office; he called me up on the telephone.

Q. And what did he say to you, if anything, on the subject of your acting as his attorney in the event of his receiving the appointment?—A. He said that he was in a situation of some embarrassment; that he learned after consultation with the attorneys for the San Francisco Stock Exchange in the morning of the day that he spoke to me—that was subsequent to my conversation with him on the preceding evening—he learned that the counsel for the San Francisco Stock Exchange expected to act as his counsel as receiver, and he felt under obligation to me in the matter, and that it was an awkward situation for him; and I replied that he need not consider me in the matter at all, that I was entirely willing to eliminate myself, and that he should make whatever selection his interests dictated without consideration of any obligation that he might have to me.

Q. Did he say who the attorneys were for the San Francisco Stock Exchange?—A. Heller, Ehrmann, White & McAuliffe.

Q. Did he say in that talk with you whether or not he had already been in communication with those lawyers?—A. Yes; he stated he had been in communication with those attorneys prior to his telephone conversation with me. That, of course, was the origin of his information that he was in an awkward position in the matter.

Mr. LINFORTH. You may take the witness.

Mr. Manager PERKINS read the cross-examination as appearing in the deposition as follows:

Cross-examination by Mr. PERKINS:

Q. How long had you known Mr. Strong?—A. I should say for 2 years.

Q. Had you ever acted as his attorney?—A. I never did.

Q. Do you know why he first spoke to you about acting as his attorney?—A. I know what he told me, Mr. Perkins; he said that he wished to select counsel who had had experience in stock brokerage law. He selected me because of the fact that he was under the impression that I was expert in that field of the law.

Q. Was he correct in his thought about that?—A. I will leave that to my critics.

Q. Well, you had had a good deal of experience in stock brokerage law, had you?—A. Yes. I have been closely connected with the brokerage business for a period of more than 10 years. A great deal of my practice is in that field.

Q. Are you certain as to whether the second conversation was before or after his appointment as receiver?—A. I am quite certain it was before his appointment.

Q. That was a conversation over the telephone?—A. Yes. I am not sure, Mr. Perkins, I am rather of the recollection now that it was a personal interview. He came to my office. I am quite sure he did.

Q. What was the date of the month of the second conversation?—A. It was either the same day or the day preceding his appearance before Judge Louderback for qualification as receiver.

Q. Can you fix the date in the month?—A. Can you tell me the date of his appointment?

Mr. Manager PERKINS. Mr. President, certain colloquy then appears. Shall I read that, or merely the testimony itself?

The PRESIDING OFFICER. The Chair will suggest that the manager may do as he chooses about that. If he reads the record, that is the important thing for the Senate sitting as a court.

Mr. Manager PERKINS. I will read it all.

The PRESIDING OFFICER. If the Chair may interrupt the manager, if it is agreeable to the managers on the part of the House and to the counsel for the respondent, let the colloquy go in and be printed without being read. That will be entirely agreeable to the Chair, and it is to be assumed it will be agreeable to the Senate sitting as a court.

Mr. Manager PERKINS. Very well.

The matter ordered to be printed in the RECORD from the deposition of Lloyd Ackerman is as follows:

Mr. LINFORTH. I have the date here, Judge, if you would like to know it.

Mr. PERKINS. The date of his appointment was the 11th of March 1930?

Mr. LINFORTH. Yes; it was the 11th of March 1930.

A. And what day of the week was that, Mr. Linforth?

Mr. LINFORTH. I think it was Tuesday, Mr. Ackerman; I am not sure as to that.

Mr. BROWNING. It was.

Mr. Manager PERKINS (continuing the reading):

A. I should say the last conversation to which I have testified took place on the 10th of March, either the 10th or the 11th.

Mr. HANLEY. May I draw the attention of the managers to the fact that Mr. Linforth put the question and the answer was then given by witness? The question appears on the fifth line of the page.

Mr. Manager PERKINS. Mr. Linforth made this statement:

Yes; it was the 11th of March 1930.

A. And what day of the week was that, Mr. Linforth?

Then:

Mr. LINFORTH. I think it was Tuesday, Mr. Ackerman; I am not sure as to that.

Mr. BROWNING. It was.

Then the witness continued his answer, as follows:

A. I should say that the last conversation to which I have testified took place on the 10th of March, either the 10th or the 11th.

Mr. PERKINS. Were there any other conversations?

A. Well, there was a conversation subsequent to his appointment in which he told me what had transpired when he appeared before Judge Louderback to qualify as receiver.

Q. What did he say?

Mr. LINFORTH. We object to that as not cross-examination in any sense of the word, and hearsay.

Mr. LINFORTH. I submit that that objection was well taken. What the witness said to somebody else not in our presence is not binding on us.

The PRESIDING OFFICER. Was this objection made at the time the deposition was taken?

Mr. LINFORTH. It was made at the time the deposition was taken.

The PRESIDING OFFICER. The Chair will have to see the question.

(The deposition was handed to the Presiding Officer, who examined it.)

The PRESIDING OFFICER. The Chair is of the opinion that the question may be answered as in the deposition. It is not particularly vital.

Mr. Manager PERKINS (reading):

A. He said that he had offered the name of Heller, Ehrmann, White & McAuliffe as his counsel, and that that firm was not satisfactory to Judge Louderback; that he thereupon offered my name, and my name was not satisfactory either; and that thereupon Judge Louderback had, I think he said, revoked his appointment, or declined to confirm it.

Mr. PERKINS. That is all.

EXAMINATION OF LLOYD A. LUNDSTROM

Mr. LINFORTH. Mr. President, we will call Lloyd A. Lundstrom as our next witness.

Lloyd A. Lundstrom, having been first duly sworn, was examined and testified as follows:

By Mr. LINFORTH:

Q. Will you please state your residence and your occupation?—A. I live in Oakland, Calif., and am manager for the Fageol Motor Co.

Mr. ROBINSON of Arkansas. Mr. President, we cannot hear either counsel or the witness.

The PRESIDING OFFICER. Let the Senate be in order, and this admonition applies to occupants of the galleries as well. Counsel and the witness will both speak louder.

By Mr. LINFORTH:

Q. May I repeat the question? Please state your name and occupation.—A. Lloyd A. Lundstrom, manager for the Fageol Motor Co., Oakland, Calif., and I live there.

Q. Do you know Mr. G. H. Gilbert?—A. I do.

Q. When did you first make his acquaintance?—A. On February 19, 1932.

Q. At that time where did you make his acquaintance?—A. In the office of John A. Dinkelspiel, of San Francisco, the attorney.

Q. Did he at that time employ you in the Fageol Motor Co. case receivership?—A. No, sir.

Q. How soon after that did he employ you?—A. On March 11, 1932.

Q. Before his employment of you did you furnish him references?—A. I had a conference with him and he asked me for people and my experience, and I gave him some names.

Q. Subsequently you were employed by him, were you not?—A. Yes, sir.

Q. In what capacity?—A. To manage the sales part of the business, the affairs of the Fageol Motor Co. then being in equity receivership.

Q. During that time were you in daily touch with him after that?—A. I was in constant touch with him.

Q. During the entire receivership, from the time you were so employed?—A. Yes, sir.

Q. What were his hours at the office of the Fageol Motor Co.?—A. From 8 in the morning until 5:30 in the evening.

Q. Do you know what he did in the way of reducing the current expenses of that concern?—A. In dollars and cents, I could not answer.

Q. Can you state generally what changes, if any, he made in the personnel of the company or the employees?—A. He let the president and general manager go, and the sales manager and secretary of the company.

Mr. Manager BROWNING. The receivership let those people go, and we hardly see how it would be competent for this witness to testify that Mr. Gilbert did.

Mr. LINFORTH. The charge made is that this was an incompetent man to be receiver of this particular business.

Mr. Manager BROWNING. Absolutely.

Mr. LINFORTH. And that as receiver he merely took instructions from the president of the company. It is the intention of counsel by these questions to show what matters the receiver did of his own initiative.

The PRESIDING OFFICER. There is no objection to the witness' stating what he knows of his own knowledge.

Mr. LINFORTH. That is all I am asking, and I hope he will confine it to what he knows of his own knowledge.

The WITNESS. I know the president and general manager were let go during the equity receivership.

By Mr. LINFORTH:

Q. Do you know what the salary of the president was prior to his removal?—A. Yes, sir.

Q. What was it?—A. $600 a month.

Q. Was anybody put in his place?—A. No; I was employed for that purpose.

Q. And your salary at that time was what?—A. $200 when Mr. Gilbert hired me.

Q. And subsequently increased to what?—A. $400.

Q. At whose suggestion were you employed?—A. I was sent to Mr. Dinkelspiel, Mr. Gilbert's attorney, by Mr. Wainwright, one of the creditors.

Q. Mr. Wainwright was the representative of the bank that was the largest unsecured creditor? Is that right?—A. Yes, sir.

Q. From the time of your appointment, did you, the receiver, and Mr. Wainwright consult on various matters of policy and action that was taken in the matter of the receivership?—A. Mr. Gilbert and Mr. Wainwright and myself were present at all creditors' meetings.

Q. Was there any matter in which you were drawn in where you did not receive cooperation from Mr. Gilbert?—A. No, sir.

Mr. LINFORTH. Take the witness.

Cross-examination by Mr. Manager PERKINS:

Q. You were employed at the suggestion of the creditors' committee, were you not?—A. Yes, sir.

Q. You never knew Mr. Gilbert before the creditors' committee suggested your employment, did you?—A. No, sir.

Q. You are the man who supplanted the management there, are you not?—A. Yes, sir.

Q. You were the practical managing head of that business?—A. Yes, sir.

Q. Mr. Gilbert knew nothing about running the automotive industry, did he?—A. No, sir.

Q. The reason you had to be employed was that he did not know anything about it, was it not?—A. Yes, sir.

Mr. Manager PERKINS. That is all.

The PRESIDING OFFICER. The witness may be excused.

(The witness retired from the stand.)

DEPOSITION OF JOSEPH H. STEPHENS, JR.

Mr. HANLEY. Mr. President, we now offer depositions taken in San Francisco at the same time the deposition of the witness Lloyd Ackerman was taken. I will not read the deposition of Althea Thomas, found on page 6 of those depositions. I do not believe there is any necessity for reading that deposition. Instead we will read the deposition of Joseph H. Stephens, Jr., found on page 16 of the depositions.

The PRESIDING OFFICER. Very well; proceed.

Mr. HANLEY thereupon read the direct examination in the deposition of Joseph H. Stephens, Jr., as follows:

U.S.S. EXHIBIT O

Joseph H. Stephens, Jr., called on behalf of Harold Louderback; sworn.

By Mr. LINFORTH:

Q. Mr. Stephens, where do you reside?—A. Sacramento.

Q. Whereabouts in Sacramento?—A. Twenty-sixth and H.

Q. What is your business at the present time?—A. Contractors Adjustment Bureau.

Q. And in the month of August 1931 did you know of a concern commonly called the Prudential Co.?—A. Yes.

Q. What was the correct name of that company, the full name of it?—A. The Prudential Holding Co.

Q. Were you an officer and director in that company at that time?

Mr. PERKINS. Just don't lead him. Just ask him what he was. Wouldn't that be better?

Mr. LINFORTH. I think the question is perfectly proper; it is not leading.

Q. Were you an officer in that company at that time?—A. I was.

Q. What officer were you in that company at that time?—A. Vice president.

Q. At the time of the filing of a complaint in the office of the Clerk of the United States District Court on the 15th day of August 1931 in a suit entitled *Character Finance Co., of Santa Monica* v. *Prudential Holding Co.*, were you present in the clerk's office when that complaint was filed?—A. I was.

Q. Who else was present at the time?—A. Mr. Kearsley and Judge Louderback.

Q. I am asking you about when the complaint was filed in the clerk's office.—A. I don't know; there were clerks in there, but I didn't know any of them.

Q. Let me put it in this way: After the complaint was filed you saw Judge Louderback, did you?

Mr. PERKINS. Now you are leading him.

Mr. LINFORTH. I will put it in another form to accommodate you, judge.

Q. Did you see Judge Louderback after the complaint in that case was filed?—A. We did.

Q. Where did you see Judge Louderback?—A. In his chambers.

Q. Was that the first time that you had seen Judge Louderback?—A. Correct.

Q. Who was with you when you went to the chambers of Judge Louderback?—A. Mr. Kearsley.

Q. Who was Mr. Kearsley, what was his occupation, if you know?—A. He is an attorney.

Q. Were you introduced to Judge Louderback?—A. I was.

Q. By whom?—A. Mr. Kearsley.

Q. How were you introduced to Judge Louderback?—A. Just the ordinary introduction, that I was Mr. Stephens, of the Prudential Holding Co. That is all there was to it.

Q. Did Judge Louderback ask you anything about in what capacity you were representing the Prudential Holding Co.?

Mr. PERKINS. I object to that. It does not appear that he was representing it, and it does not appear that Judge Louderback had any conversation with him.

Mr. LINFORTH. Let me withdraw the question, judge, and I think I will meet your objection and get at it in another way.

Q. State in your own way the conversation that was had in Judge Louderback's presence by the three of you.—A. Mr. Kearsley had this petition and said that he was representing the stockholders of the Character Finance Co., and that they wanted to conserve the assets of the Prudential Holding Co., and asked that a receiver be appointed. That is all there was to it.

Q. When Mr. Kearsley said that what, if anything, did you or the judge say?—A. Well, the judge asked me what I thought about it, and I told him that I thought something should be done.

Q. In what respect, if anything?—A. For the appointment of a receiver.

Q. Was the petition presented to Judge Louderback at that time by Mr. Kearsley?—A. Yes.

Q. Was it examined or read by the judge?—A. It was.
Q. After the judge read it and examined it, did he ask you any questions in regard to it?—A. He asked me if I had read it.
Q. And what did you tell him?—A. That I had.
Q. What else, if anything, did the judge ask you in regard to that paper?—A. As I remember it, he asked me what I thought about the petition, and I told him that something should be done.
Q. Did you tell Judge Louderback at that time what your office in the company was?—A. I believe during the conversation Mr. Kearsley told him.
Q. What did he tell him?—A. That I was vice president.
Q. Of the company?—A. Of the company.
Mr. LINFORTH. You may take the witness.

Mr. Manager PERKINS read the cross-examination in the deposition of John H. Stephens, Jr., as follows:

Cross-examination by Mr. PERKINS:
Q. Mr. Stephens, have you ever seen or spoken to Mr. Kearsley since that date?—A. I have not.
Q. Did you ever see or speak to him before that date?—A. Before what date?
Q. Aren't you telling us about a time and didn't you identify a date?—A. Oh, in August, there; yes. I saw Mr. Kearsley before that; yes, once.
Q. Where?—A. In San Francisco.
Q. On what date did you see him?—A. I am sure I don't remember.
Q. How many days before the presentation of the petition?—A. It was probably the day prior.
Q. When was the petition presented?—A. You mean in the judge's office here in the building?
Q. Have we talked or have you testified about any other time or about any other petition than the one just asked about?—A. No.
Q. That is what I mean.—A. All right, what is the question, again?
Q. The question is, When was the petition presented to the judge?—A. On August 15.
Q. Do you remember that right out of a clear sky?—A. No; I have been told that right here.
Q. So you adopted the date rather than remembered it?—A. It was in the month of August, sometime or other.
Q. Please answer my question. You adopted the date rather than remembered it?—A. Yes.
Q. Have you told us all that transpired at the time of the filing of the petition by Kearsley?—A. As I remember it; yes.
Q. No attorney was present representing the Prudential Holding Co., was there?—A. No.
Q. Who was the attorney of the Prudential Holding Co. then?—A. I think Mr. Hawkins was.
Q. Did you notify him that you were going to appear?—A. No; I did not.
Q. Did you advise anybody connected with the company that you were going to appear with Kearsley before Judge Louderback?—A. I did not.
Q. Did anybody connected with the company, so far as you know, know that you were going to appear?—A. No, sir.
Q. So far as you know, did the company have any notice whatever that the petition was about to be presented?—A. No.
Q. What induced you to appear with the attorney of this adversary of your company before the judge?—A. There was no inducement at all. The——
Q. No inducement at all?
Mr. LINFORTH. Let him finish his answer, Judge. Please finish your answer.
Mr. PERKINS. No; I am controlling the examination now.
Mr. LINFORTH. I submit that the witness has a right to finish his answer, and counsel should not interrupt him in the middle of his answer.
Mr. PERKINS. I submit he has answered the question.
Mr. LINFORTH. I ask to have the record read. (Record read by the reporter.) The record shows he was still answering, Judge, when you interrupted him with another question.
Mr. PERKINS. How long a time had elapsed since you had been at the office of the Prudential Holding Co.?
Mr. LINFORTH. One moment. We object to the asking of that question, or any other question, until the witness is permitted to finish the answer which counsel interrupted.
The WITNESS. What do you mean by that question?
Mr. PERKINS. Previous to the 15th of August 1931.—A. How long a time had elapsed—I am sure I do not follow you at all.
Q. When were you at the office of the Prudential Holding Co. previous to August 15, 1931?—A. When? I was over there, I think, about a year.
Q. About a year before?—A. Yes; if that is what you want to know.
Mr. PERKINS. That is all.

Mr. LINFORTH (when the objection above set forth was reached). We waive the objection.

Mr. HANLEY thereupon read the redirect examination, as follows:

Redirect examination by Mr. LINFORTH:
Q. Where was the office of the Prudential Holding Co.?—A. In Oakland.
Q. Do you recall just where in Oakland?—A. Between Seventeenth and Eighteenth on Franklin; 1731, I think it was, to be exact.
Q. Will you state, as clearly and as nearly as you can, when you were last in the office of the Prudential Holding Co. at the place you have indicated before your visit with Mr. Kearsley to Judge Louderback's chambers?—A. It was not over 2 days.
Mr. LINFORTH. I thought he did not understand your question, Judge.
Mr. PERKINS. Then I will have to go on with my cross-examination further.
Mr. LINFORTH. Go ahead, Judge, and I will suspend until you complete it.

Mr. Manager PERKINS thereupon read the further cross-examination, as follows:

Mr. PERKINS:
Q. You say that about 2 days before your appearance before Judge Louderback with Mr. Kearsley you had been at the office of the Prudential Holding Co.?—A. Yes.
Q. When Judge Louderback was introduced to you, or you were introduced to the judge, what did you state your relationship or connection with the Prudential Holding Co. was?—A. During the conversation Mr. Kearsley said I was the vice president; that is as I remember it.
Q. Did Judge Louderback ask you if the Prudential Holding Co. was represented by an attorney?—A. I don't remember that angle.
Q. Did Judge Louderback ask if there was any lawyer representing the Prudential Holding Co. in the matter of the filing of the petition?—A. I don't remember that, either.
Q. You are not a lawyer?—A. I am not.
Q. And you did not represent yourself to the judge to be a lawyer, did you?—A. No.
Q. Did you ask the judge for time until you could get a lawyer there?—A. No. This fellow—Mr. Kearsley—was an attorney.
Q. Yes; but he was an attorney opposing your company, was he not?—A. He was representing the stockholders.
Q. Of what company?—A. The Character Finance and the Prudential Holding Co. Here is the situation: The Prudential Holding Co. had taken over the Character Finance Co. of Santa Monica and they had taken stock of the Character Finance Co., as I remember the deal.
Q. So your idea now is that Kearsley was representing the Prudential Holding Co. before the judge?
Mr. LINFORTH. Just a moment. I object to that as contrary to his testimony. He said he was representing stockholders.
Mr. PERKINS:
Q. Did you look at the papers to see whether they said that Kearsley was representing any stockholders of the Prudential Holding Co.?—A. I don't remember the exact words of the petition now.
Q. So you now think that Mr. Kearsley was acting for the stockholders of the Character Finance Co., as well as of the Prudential Co., do you?—A. Yes; I do.
Q. And did he so state to Judge Louderback?—A. He did.
Q. He told Judge Louderback that he, Kearsley, was representing stockholders of the Prudential Holding Co.?—A. And the Character Finance Co.
Q. Are you sure about this, that he said he was representing stockholders of the Prudential Holding Co.?—A. I am pretty sure about it.
Q. Did Judge Louderback say anything about whether there were any other stockholders represented by any other lawyer present?—A. I don't remember that, either.
Q. Did he ask anything about whether a lawyer was present representing the Prudential Holding Co.?—A. I don't remember that.
Q. Did he say anything about giving notice to the Prudential Holding Co. of the application for a receiver?—A. I don't remember those questions at all.
Q. So far as you recollect, did Judge Louderback say anything whatever about giving notice to the Prudential Holding Co. or any stockholder of the Prudential Holding Co. of the intended appointment of a receiver?—A. I don't remember.
Q. How long after your appearance with Mr. Kearsley did you go back to the office of the Prudential Holding Co.?—A. Well, it was not very long.
Q. That means nothing to me. How long?—A. Less than a day.
Q. Who was the president of the Prudential Holding Co. then?—A. Mr. Beck.
Q. Did you tell Mr. Beck that you were going to go before Judge Louderback?—A. I did not.
Q. Did you notify anybody connected with the Prudential Holding Co. that you were going to go before Judge Louderback?—A. Mr. Beck was not here; he was out of the State.
Q. Did you notify anybody connected with the Prudential Holding Co., its lawyer, or any of its officers that you were going to go before Judge Louderback?—A. I did not.
Q. Did Judge Louderback ask you whether any other officer of the Prudential Holding Co. knew that you were there in the matter of the application for a receiver?—A. I don't remember that question at all.
Q. Do you remember any other conversation on the part of Judge Louderback at the time that has been mentioned, when the petition for receiver was presented, other than you have already spoken of?—A. No; I can't remember.
Q. Do you remember anything else he said there other than you have already described?—A. No. It was all new to me.

Q. Please answer my question. Did Judge Louderback say anything other than you have already put into the record here?—A. No; I don't think so.

Mr. PERKINS. That is all.

Mr. LINFORTH. That is all.

EXAMINATION OF J. G. REISNER

Mr. LINFORTH. May we call J. G. Reisner?

J. G. Reisner, having been duly sworn, was examined and testified as follows:

By Mr. LINFORTH:

Q. Mr. Reisner, will you please state your name, your residence, and your occupation?—A. J. G. Reisner, San Francisco, attorney.

Q. You have been a lawyer practicing in California for how long?—A. Twenty-three years.

Q. Were you one of the attorneys in the case of Helen Lay against the Lumbermen's Reciprocal Association?—A. Yes.

Q. Whom did you represent?—A. I represented the plaintiff, Helen Lay.

Q. And who represented the defendant?—A. Bronson, Bronson & Slaven.

Q. Did you, accompanied by Mr. Slaven, present to Judge Louderback the application for the appointment of the receiver?—A. I did.

Q. Who suggested the appointment of Samuel M. Shortridge, Jr., as receiver?—A. Mr. Slaven.

Q. Did you agree to it?—A. I did.

Q. Did the judge have you both put it in writing before he made the appointment?—A. I believe Mr. Slaven had the papers himself; and the one that I signed was left blank, and I filled in the name of Shortridge at that time. We both signed a request.

Q. When Mr. Slaven suggested the name of Samuel M. Shortridge, Jr., as receiver, what did you say?—A. Well, I told him that there was another man that wanted the appointment, but that I did not feel like recommending the other man and that I would be satisfied with Shortridge, as I thought he was qualified.

Q. Were you present when the complaint or the petition was filed?—A. I was.

Q. Did you see anybody hand to Mr. Slaven a slip with any names on it from which a receiver could be selected?—A. I did not.

Q. Did you see any such message?—A. I did not.

Q. Did Mr. Slaven speak to you about any such message?—A. He did not.

Mr. LINFORTH. You may take the witness.

Mr. Manager SUMNERS. No cross-examination.

The PRESIDING OFFICER. The witness will be excused. Call the next witness.

Mr. LINFORTH. Mr. President, I understand there is one witness whose cross-examination was not completed. If counsel is ready to complete that cross-examination, the witness is here—Mr. Gilbert.

Mr. Manager SUMNERS. We do not care to proceed with cross-examination at this moment. We will undertake to cross-examine that witness when we come to the point where we have the privilege of offering rebuttal testimony.

EXAMINATION OF GEORGE D. LOUDERBACK

Mr. LINFORTH. May we call George D. Louderback?

George D. Louderback, having been duly sworn, was examined and testified as follows:

By Mr. LINFORTH:

Q. Will you please state your name, your occupation, and your residence?—A. George Davis Louderback; geologist; 107 Ardmore Road, Kensington, Contra Costa County, Calif.

Q. Are you a professor engaged at the University of the State of California?—A. I am.

Q. What is your title at that university?—A. Professor of geology, chairman of the department of geological sciences, and dean of the college of letters and sciences.

Q. Are you a brother of the respondent Harold Louderback?—A. I am.

Q. Where do you live, please; what exact place?—A. I gave that; 107 Ardmore Road, Kensington, Contra Costa County, Calif.

Q. With reference to the Alameda line, in which Berkeley is situated, where is that?—A. Kensington is immediately over the Berkeley and Alameda County line, which are coincident.

Q. A few feet over the line. About how far, in distance, is it from San Francisco?—A. In time, it is about 40 or 45 minutes.

Q. In 1930, and prior thereto, of whom did your family consist?—A. Myself and my wife.

Q. I call your attention to the 6th of April 1930. Did you on that date at your home have any talk with the respondent upon the subject of his making his home and residence with you?—A. I did.

Q. How do you recall the date?—A. I recall that because it was my birthday, and my brother came over to celebrate that day with me.

Q. Will you please state, for the information of the Presiding Officer and the Senators, what conversation you had with him in the presence and hearing of your wife on that occasion?—A. I was delayed at the university, and my brother had arrived before I got home. When I came in, after greetings concerning my birthday, and after presenting me with a gift for that occasion, my wife said that they had been talking about his coming over to make his home with us again. I said that I was highly delighted, and the conversation then was concerning where he should be located and the satisfactory character of his room, and we went into the place suggested by my wife, the room, to see whether it was satisfactory and what arrangements we should make to be suitable for him.

Q. Was a room at that time agreed upon and set apart for him in your home?—A. It was.

Q. Had he prior to that, at sometime prior, made his home with you and your wife?—A. Yes; for 3 years in Reno, Nev.

Q. Do you recall whether or not, following this conversation on the 6th of April 1930, any of his belongings were sent to your home?—A. Yes; in a day or two he had sent over a couple of trunks, and then a few days later he brought over, I think, another trunk and some hand baggage and various other things, and had these installed in his quarters.

Q. Has he had that room ever since?—A. He has.

Q. Was he furnished with a key to the room at the time you speak of—I mean to the house; not to the room?—A. Yes; a key to the house; no key to the room.

Q. Do you know whether or not on each election day following that time the respondent has voted in that county?—A. Yes; he has always come over, and the whole family has gone out to the polls together.

Q. Have you gone with him on those occasions?—A. I have.

Q. On how many occasions since that time do you know that he has voted in that county?—A. Five times.

Q. When was the last?—A. The last general election in November.

Q. How soon after this arrangement was made on the 6th of April 1930 did the respondent come over to your home to stay?—A. A week or so after; about the middle of April.

Q. How many evenings did he remain there overnight?—A. I believe two evenings.

Q. What happened those two evenings, so far as your own knowledge goes?—A. On the second evening he was taken with a rather severe attack of asthma.

Q. Was he subject to attacks of asthma prior to that?—A. Yes; since he was a small boy 5 or 6 years old.

Q. Upon the second evening, after being subjected to that attack of asthma, when did he next return to your home?—A. He thought he had better wait until this cleared up, and he came over in about 2 weeks, I think. The next time was the 2d of May.

Q. On that occasion did he remain overnight in this room that had been set apart to him?—A. He did.

Q. What, if anything, happened with reference to his condition that evening?—A. He had another attack of asthma, and was unable to eat breakfast the next morning.

Q. The following night did he also return?—A. I think not.

Q. How soon after that did he return again?—A. About the middle of May, about 2 weeks later.

Q. What happened on the third visit with reference to his condition?—A. He suffered again from an attack of asthma, which came on early, and he was unable to eat more than the very start of his dinner, and that caused him a very great deal of trouble during the night.

Q. Have you plants and flowers in your house and around the house?—A. We have.

Q. Have you any animal in the house also?—A. We have a pet cat.

Q. Do you know of your own knowledge that just prior to leaving California for Washington the respondent went to your home in order to get his belongings to come here?

Mr. Manager PERKINS. I object to the form of the question.

Mr. LINFORTH. I withdraw it if there is any objection to it. I am trying to save time if I can.

The PRESIDING OFFICER. The question is withdrawn.

By Mr. LINFORTH:

Q. When was the last time you saw the respondent at your home?—A. The day that he left for Washington this last trip.

Q. You mean on this trip?—A. Yes.

Mr. LINFORTH. You may take the witness.

Cross-examination by Mr. Manager PERKINS:

Q. Doctor, you have told the Senate all of the occasions when your brother spent time at your house, have you not?—A. I think those are all the occasions when he slept there at night.

Q. That is, he slept there three nights?—A. I think I testified to four.

Q. Four nights since when?—A. I did not get the question.

Q. Four nights since when?—A. Since the middle of April 1930.

Q. That is to say, in 3 years and 1 month he has slept at your house four nights. Is that right?—A. Four nights.

Q. As a matter of fact, you and your wife are away over week-ends, are you not, as a rule?—A. No; not as a rule.

Q. So that he did not spend any week-ends with you, did he?—A. Yes; he very frequently spent week-ends.

Q. Overnights?—A. Not overnights; no.

Q. He came over and made a visit upon his brother. Is that right?—A. I suppose he did.

Q. Did he pay you any money during that time?—A. He did not.

Q. He did not pay any room rent?—A. He did not.

Q. He did not pay any board?—A. He did not.

Q. The four occasions he came over, four of those times, he voted, did he not?—A. He did not.

Q. He did not vote then?—A. Not those four times.

Q. You said he voted five times there.—A. He did vote five times, but those are not the times I testified to that he slept there overnight.

Q. That is to say, in 3 years and 1 month he has slept at your house four times, and he has voted from your house five times. Is that right?—A. He has.

Q. You have told the Senate all you know about the residence of your brother at your house, have you not?—A. I have not.

Q. When was the last time that your brother slept at your house?—A. The last time was, I think, in July 1931.

Q. So that for 2 years, less 2 months, he has not even slept there, has he?—A. That is correct.

Q. And for the other 1 year and 3 months he has been there four times overnight?—A. Yes.

Q. And he always has suffered attacks of asthma when he comes, has he not?—A. When he tries to stop overnight.

Q. Do you keep the cat in the house overnight?—A. We generally do.

Q. You know that asthma is due to breathing effluvia of some kind, is it not?—A. I am not sure about the cause.

Q. As a matter of fact, it was impossible for him to stay at your house overnight without having asthma, was it not?—A. That appeared to be the case.

Q. He never paid a dollar for board or a dollar for room, did he?—A. He did not. I did not expect him to.

Q. What did you use that room for previously?—A. That room was used previously as what my wife called the spare room, where guests came in.

Q. How many guest rooms have you in the house?—A. We now have one.

Q. You have one guest room?—A. Yes.

Q. Is that the room you assigned to your brother?—A. No.

Q. You mean one in addition?—A. One in addition.

Q. How do you know he voted five times in your municipality?—A. Because I went with him to the polls.

Q. And he also registered his motor car there, did he not?—A. Yes.

Q. He told you that he had trouble with his wife, and he wanted to come over and live in your home, did he not?—A. He did not.

Mr. LINFORTH. One moment. We object to that as not cross-examination in any sense of the word.

The PRESIDING OFFICER. The objection is sustained.

Mr. Manager PERKINS. May I submit that the conversation that took place is supposed to have been related by the witness, and I might have a right to cross-examine.

The PRESIDING OFFICER. The Chair is under the impression that the relations of the respondent with his wife are not particularly in issue.

Mr. Manager PERKINS. No; but the purpose of establishing this pretended residence is very important.

The PRESIDING OFFICER. The Chair will stand on the ruling which has been made.

Mr. Manager PERKINS. The managers bow to the ruling of the Chair. That is all.

Mr. LINFORTH. May I ask one further question, Mr. President?

Redirect examination by Mr. LINFORTH:

Q. Professor, not to be exact, but approximately, how often has the respondent been to your house per week, on an average, since 1931, April of that year?

Mr. Manager PERKINS. We object to that because it is not redirect examination and is not based on the cross-examination, and it assumes things not in evidence.

The PRESIDING OFFICER. It would seem to the Chair that that very question was gone into in cross-examination, and now on redirect examination the counsel for the respondent would have a right to refer to the question. The objection is overruled.

The WITNESS. Except for the times when he is out of town, he comes almost every week.

Mr. LINFORTH. No further questions.

Recross-examination by Mr. Manager PERKINS:

Q. You mean he makes a visit there sometime during the afternoon in a week?—A. He stays there frequently throughout the afternoon and evening.

Q. As a matter of fact, you know that he has resided continuously at room 26 in the Fairmont Hotel during this period, do you not?

Mr. LINFORTH. One moment. We object to that as calling for the opinion or conclusion of the witness on a legal proposition.

The PRESIDING OFFICER. If he has knowledge of the subject, he can answer. Answer the question. The objection is overruled.

Mr. LINFORTH. May I add, Mr. President, with your permission, that the point of my objection is that the question is, "He has resided"? A question of residence is a legal question, and that is the point of the objection.

The PRESIDING OFFICER. The Chair understood counsel to suggest that the chief reason was that he called for a conclusion, and the Chair simply suggested to the witness that he state what he knows of his own knowledge.

Mr. LINFORTH. I adopt that reasoning.

The PRESIDING OFFICER. The witness will answer the question.

The WITNESS. May the question be read?

The Official Reporter read as follows:

Q. As a matter of fact, you know that he has resided continuously at room 26 in the Fairmont Hotel during this period, do you not?

The WITNESS. I am not sure what that question means.

By Mr. Manager PERKINS:

Q. Well, he has continually had a room in the Fairmont Hotel which he has occupied there every night during the 3 years and 1 month mentioned?

Q. I know that he has had the use of a room in the Fairmont Hotel, but I would hardly say that he has practically occupied it every night for the last 3 years.

Q. Have you visited him at the Fairmont Hotel?—A. I have a couple of times.

Q. And you visted him in his room, did you not?—A. I think once or twice.

Q. And you know from your visitation there that he has occupied room No. 26 in the Fairmont Hotel?—A. He has; yes.

Q. That is all.

The PRESIDING OFFICER. The witness will be excused, if there are no further questions.

Mr. LINFORTH. There are no further questions.

The PRESIDING OFFICER. Very well.

EXAMINATION OF MARSHALL B. WOODWORTH

Mr. LINFORTH. May we call Marshall B. Woodworth?

Marshall B. Woodworth, having been duly sworn, was examined and testified as follows:

By Mr. LINFORTH:

Q. Would you please state your name, residence, and your occupation?—A. Marshall B. Woodworth; residence, San Francisco; attorney at law.

Q. And are you the Marshall B. Woodworth spoken of this afternoon or today as being United States attorney at San Francisco at one time?—A. Yes, sir.

Q. Were you appointed as the attorney for the receiver in the Helen Lay case, the so-called Lumbermen's Reciprocal Association case?—A. I was.

Q. And do you recall who spoke to you about acting in that capacity?—A. Mr. Samuel M. Shortridge, Jr., spoke to me about the matter. He telephoned to my office some 2 or 3 days, as I recall it, previous to his appointment and asked me whether I would act as his attorney in that case.

Q. How long did you act in that receivership matter, Mr. Woodworth? I don't mean to be exact, but just approximately.—A. One year and six months, from the 29th day of July 1930, and until the 9th day of January 1932.

Q. Are you familiar with the orders signed by the respondent on the 15th day of December 1931 settling the final accounts of the receiver?—A. I am very familiar with the order, having myself prepared it.

Q. And did you attend upon the court proceedings at the settlement of the final account of the receiver?—A. What is the question?

The PRESIDING OFFICER. The reporter will read the question.

The Official Reporter read as follows:

Q. And did you attend upon the court proceedings at the settlement of the final account of the receiver?

The WITNESS. I did.

Q. Did the court, upon the submission of that matter, declare that the account was settled and the receiver ordered to turn the property over to the State insurance commissioner?—A. The court did.

Q. Who, then, afterward prepared the written order?—A. I did.

Q. You are familiar with the proviso provision, so called, in that order?—A. Perfectly.

Q. Who inserted that provision in the order as originally drafted?—A. I did myself.

Q. What was your purpose in inserting that provision in that order?—A. On the first appeal the circuit court of appeals had directed the lower court to settle the account of the receiver and then to turn over the property to the State insurance commissioner. In pursuance of that order, the account was settled, and the order made directing the Federal receiver to turn over this property to the State insurance commissioner. Thereafter the attorney for the State commissioner indicated that he would take an appeal from the order of the district judge settling the account. In view of that fact, I took the position that, pending the appeal, the property should remain with the trial court, or should be turned over upon giving a proper bond. I took the position that if an appeal were taken from the order settling the account the account was not settled at all, for the reason that we did not know what action the circuit court of appeals might take with reference to the account; and I explained to the judge that the attorney for the State insurance commissioner——

Q. Pardon me a moment before you reach the point of taking the order to the judge. Did you, after drafting the order, first submit it to Mr. Guerena, the attorney for the insurance commissioner?—A. I did, and I had a number of conferences with Mr. Guerena with reference to that particular portion of the order and also with reference to his furnishing a bond in case the property was turned over by the Federal receiver to the State insurance commissioner.

Q. Now, Mr. Woodworth, we are all tired, and would you please make it as short as you can. What talk did you have with Mr. Guerena, the attorney for the State insurance commissioner, with reference to that proviso provision, so called, in that order?—A. I talked with him about that particular provision in the final decree, and Mr. Guerena's principal objection to it was not the proviso itself but the amount of bond that he should furnish. I contended that the bond should be the equivalent of the property to be turned over, to wit, some thirty or forty thousand dollars, about $25,000 in money, notes totaling some ten or fifteen thousand dollars, and other property. He claimed that the State insurance commissioner, being a public official, the amount of the bond should be nominal or should be in the sum of $5,000. That seemed to be his principal objection.

Q. Now, was it for those reasons and those reasons only——

Mr. Manager SUMNERS. Mr. President, we respectfully make the suggestion that counsel is going too far in the discussion and detailing of conversation between the witness and Mr. Guerena. This is an instance where it is charged that the judge put a condition to the mandate of the circuit court of appeals, and really the reason that may have prompted this witness, or Mr. Guerena will not bear directly upon the motive which prompted the respondent in attaching that condition to the mandate of the circuit court of appeals.

Mr. LINFORTH. May I add just a word in reply, Mr. President? In this article of impeachment the respondent is charged with improperly and oppressively inserting that clause in that order. Surely we have a right, in defense of that charge, to show the circumstances under which the order was made so as to show that it was not oppressively done in any sense of the word.

Mr. Manager SUMNERS. We concede that there should be considerable latitude, but our suggestion is that the witness is going too far afield in making the explanation.

The PRESIDING OFFICER. The Chair is ready to rule. What took place, or substantially took place, the Chair thinks is admissible.

Mr. LINFORTH. That is all I am asking for.

The PRESIDING OFFICER. The Chair would suggest to counsel for the respondent and to the managers on the part of the House, and to the witness as well, to be as brief as possible, and suggests that the witness give the Senate the substantial facts as to what took place.

Mr. LINFORTH. That is my hope. I have stepped along as fast as possible today.

By Mr. LINFORTH:

Q. Mr. Woodworth, was there any other reason why you put that proviso provision in the order?—A. No, sir.

Q. When you presented that letter to Judge Louderback did you give him any explanation of the reason for that provision?—A. When I presented the order to the judge he expressed his disapproval of that particular provision, and I explained to him that the purpose of it was, in view of the fact of a second appeal having been taken from the order settling the account that, in my judgment, the whole matter was held in abeyance until the court of appeals should pass upon the second appeal. The accounts were not really settled; there was no telling what the circuit court of appeals was going to do. It might ratify the action of the district judge or it might enlarge upon the disallowances; there was no telling what would be done; and for that reason the proviso was put in for the purpose of getting a bond. That was the sole purpose.

Q. After that order was filed did you ever see the judge, the respondent, in regard to it?—A. Some 2 weeks subsequent to that I did.

Q. What did he then say to you with regard to that order?—A. He stated that he observed that the second appeal had been taken in the case; that he had reconsidered his decision with reference to the one particular provision in the final decree settling the account, and that he thought, under all the circumstances, that that proviso should be emasculated from the decree and the property turned over. I told him if that was his view that I would naturally submit to it.

Q. Did he at that time tell you that he was satisfied the provision was erroneous and wrong?—A. He did; and over my objection the order was changed, and I was directed to——

Q. What did he direct you then to do?—A. He directed me to obtain a stipulation from all the parties, the party plaintiff, the party defendant, and also the attorney for the State insurance commissioner, stipulating that, in spite of the pending appeal, the property be turned over and the matter terminated.

Q. In other words, that the order be amended by striking out that clause?—A. Yes, sir.

Q. And you obtained that stipulation?—A. I did.

Q. And he then made an order accordingly?—A. The order was made and the property turned over.

Q. In how many matters had you been appointed attorney for receiverships in the 5 years that Judge Louderback had been on the Federal bench?—A. In just two cases.

Q. Which two?—A. The case which I have mentioned and another one, entitled " the Pioneer Fruit Co. case."

Q. Did you give to Judge Louderback or anyone else any part or portion of any fees that were allowed you in either matter?—A. No, sir; absolutely not.

Q. During the 8 years that the judge was upon the State bench did you receive any appointment of any kind from him?—A. I did not. I hardly knew the judge at that time. It was only after he became Federal judge that I became acquainted with him.

Mr. LINFORTH. You may take the witness.

Cross-examination by Mr. Manager BROWNING:

Q. Mr. Woodworth, I believe you testified that some 3 days before the petition was filed Samuel Shortridge, Jr., approached you to know if you would act as his counsel?—A. Yes, sir.

Q. Then, before the petition was filed, you also contacted the respondent?—A. I did. I was requested to call upon the judge and ascertain whether my appointment would be agreeable to him, and I did so.

Q. What day were you appointed with regard to the day the receiver was appointed?—A. I think it must have been on the 30th day of July or the 1st of August 1930.

Q. Was it not in fact the same day the receiver was appointed?—A. I doubt that very much. He was first appointed and thereafter requested my appointment.

Q. You spoke of the Pioneer Fruit Co. case. In what capacity did you act in that?—A. As attorney for the receiver.

Q. Your fee first allowed in that case was how much?—A. The fee allowed by the referee was $500.

Q. You appealed from that?—A. I did appeal from that; yes.

Q. To the respondent?—A. I did; yes, sir.

Q. How much did he allow?—A. He increased the allowance $1,500. He allowed $2,000.

Q. When was that fee paid to you?—A. The fee was paid some time, I think, in the month—I really do not recollect just when, but some time, I think, in the month of March. I was appointed in January and acted for 2 months. It was probably paid in the month of March or April 1932 or 1931; I am not sure as to that.

Q. What fee did you get in the Lumbermen's Reciprocal Association case?—A. I was allowed $3,000 on two successive occasions.

Q. Do you remember the date exactly that you collected?—A. The first $3,000 was allowed in the month of December 1930, and the second $3,000 was allowed in the month of March 1931.

Q. Was there any hearing on the allowance of those fees?—A. All parties plaintiff and defendant, all the parties in interest, agreed that the compensation was fair and reasonable, and upon a stipulation of all parties the judge made the order.

Q. Do you mean that the commissioner of insurance stipulated to those fees?—A. He did not, because we did not consider that he was a party to the case at all.

Q. Who do you mean by the parties in interest?—A. The plaintiff, who brought the suit, and the defendant, whose property was involved.

Q. You did not have any creditor's consent about that, did you?—A. The only creditor here was the defendant himself.

Q. The allowance of fees was reversed on the second appeal?—A. The allowance was to a certain extent reversed; yes, sir.

Q. Has there been any restitution made in the amount that the circuit court ordered to be paid back to the estate?—A. I think that is in process of being done, yes, sir, upon the order of the respondent the receiver was directed to return those moneys, which included two or three thousand dollars' worth of costs on appeal taken by the State insurance commissioner. Those were also taxed against the receiver personally. Upon his failure to return the moneys within a period of 30 days, then a writ of scire facias issued, and that is pending in the circuit court. That was issued to the bonding company and also against Mr. Samuel M. Shortridge, Jr., the principal on the bonds. That has been issued and is now pending.

Q. What authority did you have for the order of the respondent permitting 30 more days before this writ could issue on the mandate of the circuit court?—A. It is usual in all court proceedings to give what is deemed to be reasonable notice.

Q. That is the only authority you know of?—A. I thought that was sufficient authority.

Q. On the order which you state now the judge objected to at the time, I will ask you if you trapped the respondent into making that order?—A. I did not trap him or any other judge. That is ridiculous.

Mr. LINFORTH. Mr. President, may we have the question read?

The PRESIDING OFFICER. The question will be read.

The Official Reporter read as follows:

Q. On the order which you state now the judge objected to at the time, I will ask you if you trapped the respondent into making that order?

Mr. LINFORTH. There is no objection to the question.

By Mr. Manager BROWNING:

Q. I would like to read to you, Mr. Woodworth, the statement of the respondent before the committee in last January, and ask you if this is a correct statement of what took place——

Mr. LINFORTH. At what page?

Mr. Manager BROWNING. At page 363, as follows:

Mr. BROWNING. At the time that the first order of reversal came down to turn over the assets to the receiver in the State court, or

the State commission, you provided in the order that the property should be turned over if there was no appeal taken from the fees allowed?

Judge LOUDERBACK. I think that was a very erroneous order to make. That order was presented to me by Mr. Woodworth. I will concede to you that that was erroneous.

He pleaded with me this way: He said, "Can we tell what to hold out? Shall we hold out on all the 52 objections of Mr. Guerena?" He said, "Now, couldn't that order be made in that form?" And he told me that Mr. Guerena was not going to take the appeal, anyway, and then I signed it and later I told him I would not let that stand, that I had made a grave mistake in suggesting even that the money be held, and I will concede that I should not have done that. It was an error. I suppose every judge has been trapped into errors by attorneys. That was wrong, and I do not think that should have been done.

The WITNESS. That is substantially correct, but I did not purposely trap the judge.

By Mr. Manager BROWNING:

Q. Did you tell him that Mr. Guerena was not going to make the appeal?—A. I told him, on the contrary, that Guerena threatened to appeal, and it was for that very reason that this order was inserted. In other words, it was to protect the status quo of the estate in the hands of the Federal receiver pending the repeal, and the only objection Mr. Guerena had was to the amount of the bond.

Q. When the order was made you informed the respondent in that conversation that Mr. Guerena was threatening the appeal?—A. He certainly was. I think Mr. Guerena will so testify.

Q. You told the respondent at that time that he was threatening the appeal?—A. Yes; and that was the purpose of the proviso.

Q. Do you know Mr. W. S. Leake?—A. Yes; I know him very well.

Q. How long have you known him?—A. I have known him for quite a number of years; I should say 25 years. I knew him when he was editor of the San Francisco Call, a very influential paper in those days.

Q. That was operated by the Spreckels' interests at that time?—A. Yes.

Q. And the Spreckles' interests had him in control of it?—A. Yes; that is true.

Q. You knew him intimately, I believe?—A. I cannot say that I did. I knew him very well as a public man, but socially—intimately—I cannot say that.

Q. Since his retirement from active public life have you not been with him frequently?—A. No, sir; I have not.

Q. You know he has maintained an office in San Francisco?—A. Yes.

Q. You have been to that office?—A. I have been to the office; yes, sir.

Q. You gave him credit for having you appointed district attorney in the northern district of California, I believe?—A. I do not want to do the gentleman an injustice, but my appointment was due to the two Senators of the State. I must confess that Mr. Leake did all he could to help me, but with all due deference I did not owe him my appointment.

Q. You gave him credit for manipulating it for you, did you not?—A. To be charitable, I want to give him credit.

Mr. LINFORTH. Mr. President, I take exception to that question.

The PRESIDING OFFICER. The Chair does not think it is pertinent.

The WITNESS. I feel very grateful to him for what he did for me; I will say that—very grateful.

By Mr. Manager BROWNING:

Q. You did not have a safe-deposit box, did you?—A. No, sir; I am not so fortunate.

Mr. Manager BROWNING. That is all.

Mr. LINFORTH. No further questions of this witness.

The PRESIDING OFFICER. The witness may be excused.

(The witness retired from the stand.)

Mr. LINFORTH. Mr. President, we would like to ask permission of the Presiding Officer for a moment to confer.

The PRESIDING OFFICER. Very well.

(A pause.)

EXAMINATION OF BRICE KEARSLEY, JR.

Mr. HANLEY. We should like to call Mr. Brice Kearsley, Jr.

Brice Kearsley, Jr., having been duly sworn, was examined and testified as follows:

By Mr. HANLEY:

Q. State your name in full, your business, and your residence?—A. My name is Brice Kearsley, Jr. I am an attorney at law, and I live at Los Angeles, Calif.

Q. Were you at one time connected with the firm of Gold, Quittner & Kearsley?—A. I was.

Q. In the year 1931 and about the 5th day of August of that year, did you present a petition or complaint to Judge Louderback on behalf of the Character Finance Co., of Santa Monica, for the appointment of an equity receiver?—A. I did; but it was on the 15th day of August 1931.

Q. With whom did you go to the chambers of Judge Louderback?—A. With Mr. Joseph Stephens, Jr.

Q. Who was he?—A. He was the vice president of the Prudential Holding Co.

Q. Did you present the complaint to the judge and request the appointment of a receiver?—A. I did.

Q. What did you say to Judge Louderback at that time and place, in the presence of Mr. Stephens?—A. I told Judge Louderback that I represented the Character Finance Co., of Santa Monica, who owned and controlled $90,000 worth of the stock of the Prudential Holding Co.; that the Prudential Holding Co. had guaranteed certain obligations of the Character Finance Corporation and had failed to make good the guarantee; that we—that is to say, the corporation and myself—had endeavored to obtain some satisfaction out of them concerning these guaranties; that we had made an investigation of the Prudential Holding Co. and found out that their affairs were in a very precarious situation, and that something would have to be done in order to conserve the assets for the benefit of the Character Finance Corporation; that we thereupon had a meeting of the board of directors, and the board of directors voted to apply for a receiver in equity in order, if possible, to conserve what assets there were left; that I brought Mr. Stephens, who occupied a similar position to certain members of the Character Finance Corporation as the vice president of the Prudential Holding Co., to tell him what he knew about it; that Mr. Stephens was prepared to recommend an equity receivership; that, in our opinion, an equity receivership was absolutely necessary, and that we wished to have a receiver appointed. I also presented him with a petition which set out in full exactly the facts as we had discovered them in our investigation.

Q. Had you made a thorough investigation of what was the then condition of the Prudential Holding Co.?—A. We had; yes.

Q. Had you come to any conclusion from your investigation as to its condition?—A. Yes; we had.

Q. What condition did you find it to be in?—A. We found that the Prudential Holding Co. was absolutely insolvent, and that what assets were left were rapidly being depreciated and done away with; and that the officers of the corporation, in our opinion, were incapable of handling it, and were looting it in every possible way.

Q. Did you in absolute good faith, on behalf of your plaintiff, present these matters in the complaint that was had?

Mr. Manager BROWNING. I think that is going very far afield.

Mr. HANLEY. Oh, no; he is accused——

The PRESIDING OFFICER. Answer the question; but the Chair will suggest to counsel to conserve time as much as possible.

The WITNESS. We did; yes.

By Mr. HANLEY:

Q. Immediately upon the presenting, did you suggest any receiver to Judge Louderback?—A. I did not.

Q. Did you leave an order requesting the appointment of a receiver?—A. I did.

Q. Whom did he appoint?—A. Mr. G. H. Gilbert.

Q. Had you anything to do with the appointment of Mr. G. H. Gilbert?—A. I had not.

Q. Had you anything to do with the appointment of his attorney?—A. I had not.

Q. After the appointment of the receiver, did your office cease at that time?—A. Yes, sir. I never saw him again at any time until here in Washington.

Q. Thereafter a motion was made on behalf of the Prudential Co. set aside the receivership. Did you personally appear in that?—A. I did not; my associate did.

Q. What member of your firm appeared in it?—A. Mr. Francis Quittner.

Q. And he resisted the dismissal that was finally entered in that case?—A. He did.

Mr. HANLEY. You may examine.

Cross-examination by Mr. Manager BROWNING:

Q. Mr. Kearsley, you are not now a member of that firm?—A. I am not.

Q. Your connection with that firm was terminated because of the conduct of this case, was it not?—A. It was not.

Q. You alleged in the petition you filed that the assets of the concern were $1,050,000, did you not?—A. I alleged that, yes; upon information and belief.

Q. And you swore to it yourself?—A. I did.

Q. On information and belief?—A. Correct.

Q. And that is the only verification you had of the petition?—A. That is correct.

Q. What did you allege in that petition were the liabilities of the concern?—A. I do not recall.

Q. How large a bond did you have the receiver put under?—A. I think it was $100,000. I cannot remember exactly. It may have been $50,000.

Q. Was it not $50,000, and was not the bond running in favor of the Government itself?—A. The usual bond was put up.

Q. You did not have any indemnity to the defendant company, did you?—A. I did not.

Q. And you did not have any to the other creditors?—A. I did not.

Q. And nobody appeared for the company there that day in the way of counsel, did they?—A. They did not.

Q. They had no notice of it, did they?—A. They did not.

Q. You give it as your opinion now, do you not, Mr. Kearsley, that the court had no jurisdiction on the face of that petition?—A. I absolutely do not; and subsequent cases have shown the contrary.

Q. What was the termination of this case in that regard?—A. That was dismissed.

Q. And it was dismissed on the ground that there was no jurisdiction?—A. Exactly correct.

Q. Where are you practicing law now?—A. In Los Angeles.

Q. Do you have an office?—A. I do.

Q. Where is it located?—A. 414 Pacific National Building.

Q. Are you associated with any firm now?—A. Not now.

Q. When you went to San Francisco to file this petition, whom did you have associated with you in the preparation of it?—A. No one.

Q. Do you know Dinkelspiel & Dinkelspiel?—A. I do.

Q. How long have you known them?—A. I met them when I went to San Francisco.

Q. To file this petition?—A. Correct.

Q. Where did you meet them?—A. I met Mr. John Dinkelspiel the morning the petition was filed.

Q. Where?—A. I met him at the court room.

Q. What was he doing up there?—A. Well, I can only assume what he was doing. I understand he came to be counsel for Mr. Gilbert.

Q. But you had seen him before that time?—A. No; I had not seen him before that time; no.

Q. Had you seen his brother Martin?—A. No.

Q. You had been to his office?—A. Yes; I had been to his office.

Q. Whom did you see at his office?—A. Mr. Stephens.

Q. Did you not see either one of the Dinkelspiels at their office that day?—A. Yes; I did later on that day, after the petition was filed.

Q. I mean before the petition was filed.—A. No, sir.

Q. But you did meet Mr. Stephens at their office?—A. That is correct.

Q. How came he there? Why was he at their office?—A. Because I asked him to meet me there.

Q. Had you had any correspondence with them about it before you went up there?—A. No. I had talked to Mr. Stephens on the telephone and asked him to meet me at their office. I can explain that.

Q. How did you get hold of Mr. Stephens in the matter?—A. Called him on the telephone.

Q. Had you had any communication with him before that?—A. No. I was directed by the board of directors of the Character Finance Corporation to get in touch with Mr. Stephens concerning this matter.

Q. Why did you not call the president?—A. Mr. Beck?

Q. Yes.—A. Because they did not desire to call the president.

Q. Why did you not call Miss Lind, the secretary?—A. I never heard of her before.

Q. You did not know anything about this concern, did you?—A. I most certainly did.

Q. Did you get your information through Mr. Stephens alone?—A. No, sir.

Q. Had you ever met him before that day?—A. No, sir.

Q. Had you ever had any correspondence with him before that day?—A. I had not; no.

Q. Had your firm had any correspondence with him?—A. No; they had not that I know of.

Q. Why did you pick Dinkelspiel's office for him to meet you?—A. Because we—the firm that I was associated with, not myself—had used the office of Dinkelspiel & Dinkelspiel on other occasions as corresponding attorneys in San Francisco. I personally had never met either of them at any time or been in their office before.

Q. You say now that you did not meet them that morning when you were at their office?—A. I met them afterward. I met Martin Dinkelspiel.

Q. I mean that morning.—A. No, sir.

Q. Did you see them?—A. No. I met him in the anteroom. I was in a great hurry that morning to get over to court.

Q. In fact, it was quite a hurried-up proceeding, was it not?—A. It was not. It was deliberated for approximately a month before we took any steps.

Q. How long did you stay in the presence of the respondent when you filed the petition and asked for the receivership?—A. I should say approximately one half hour.

Q. That was the time when you told him about Mr. Stephens' attitude?—A. Yes; that is correct.

Q. Did Mr. Stephens make any statement about it?—A. He did.

Q. What was it?—A. He told Judge Louderback that, in his opinion, it was absolutely necessary that something be done, and that he thought that the appointment of a receiver would be a wise thing to do.

Q. You remember that language?—A. Not exactly. I remember it in effect.

Q. What was it? What did he say?—A. I do not recall his exact words.

Q. Stephens did not represent himself there that day as representing the firm, the Prudential Holding Co., did he?—A. He told Judge Louderback that he was the vice president of the Prudential Holding Co.

Q. That is not the question I asked you. I asked you if he represented to the respondent at that time that he was representing the firm, the Prudential Holding Co.?—A. Not strictly in the sense of representing it; no.

Q. Did he claim that he was authorized to represent them?—A. He did not.

Mr. Manager BROWNING. That is all.

The witness retired from the stand.

EXAMINATION OF DAVID K. BYERS

Mr. LINFORTH. Please call David K. Byers.

David K. Byers, having been duly sworn, was examined and testified as follows:

By Mr. HANLEY:

Q. Let us have your name, your business, and your residence.—A. David K. Byers; San Francisco, Calif.; secretary and accountant, Western Coast Engineering Co.

Mr. Manager SUMNERS. Please speak louder.

By Mr. HANLEY:

Q. Were you employed at any time as an auditor for the Prudential Holding Co.?—A. I was.

Q. Who employed you?—A. Mr. Beck, the president.

Q. Where is Mr. Beck?—A. To my last knowledge, in Mexico City.

Q. Did he, at the time he employed you, hand you what purported to be a balance sheet of that company as of December 31, 1930?

Mr. Manager PERKINS. Mr. President, we object.

The WITNESS. He did.

Mr. Manager PERKINS. It is wholly immaterial in this proceeding what Mr. Beck did with this employee of his company.

The PRESIDING OFFICER. What is the theory of counsel in offering this testimony?

Mr. HANLEY. The theory is this: We wish to show by this witness that the officers of the Prudential Holding Co., when they employed the auditor, and at the present time, had a stuffed condition of alleged assets, that a balance sheet would not be a balance sheet, that it would not tally; that it practically had no assets, that it was a bankrupt corporation right up to the hilt, and that all it had was a few hundred dollars in bank; that it had hypothecated one piece of property on top of another; that it had made one deed of trust and a second deed of trust; that the officers of the company had decamped with the money; and that Beck had taken the money, after the first officer had died; that this man worked for 2 years and ascertained each and all of those facts. We can go down the balance sheet from the beginning to the end.

The PRESIDING OFFICER. It would be quicker to have the witness answer the question than to have the explanation of counsel. Let the witness go ahead and answer.

Mr. HANLEY. I will ask the reporter to read the last question.

The Official Reporter read as follows:

Q. Did he, at the time he employed you, hand you what purported to be a balance sheet of that company as of December 31, 1930?—A. He did.

By Mr. HANLEY:

Q. What assets, if any, did you find in that company?

Mr. Manager PERKINS. We object. If this be admissible, we will have to go in and try the whole case of whether or not the Prudential Holding Co. was or was not in fact insolvent, and the only inquiry here is as to the conduct of the respondent with reference to the petition filed, and not with respect to the actual assets of the company.

The PRESIDING OFFICER. The Chair thinks it is in issue here, but that it is more or less unimportant. Might not the Chair suggest to counsel to confine himself to the issue as closely as possible, and go along with the evidence?

Mr. HANLEY. We are trying to do that and do it expeditiously. It is alleged that this was a million-dollar corporation. It is alleged that they did so-and-so and so-and-so. Now I am going to show the real condition of this alleged, mythical corporation of some millions of dollars.

The PRESIDING OFFICER. The objection is overruled.

By Mr. HANLEY:

Q. What did you find, if anything, with reference to its assets, as given to you by the president?—A. Owing to the condition of the accounts, it was impossible to determine any definite values to any of their assets. The accounts they showed me in most cases could not be supported by any evidence supporting any values whatsoever; and with regard to the depreciation of the properties which they entered on their books, they never had any authentic appraisal made. The president of the company would simply add the values, depreciate the values, and have them entered on the books. Insofar as their operations since their inception, they always ran at a heavy loss, their operating expense was very heavy, their trades in real estate and stocks always showed a big loss to the corporation; and in later days, when I attempted to find deeds of trust or stock certificates supporting the assets as they appeared in their ledgers, they were not there, and I never was given a satisfactory explanation as to where they disappeared to.

Q. Was the property mortgaged and second mortgaged?—A. Yes, sir.

Q. Were you, during the 2 years you were connected with the company, ever able to get from anyone connected with the company an intelligent statement or set-up of the assets or the liabilities?—A. No, sir.

Mr. Manager SUMNERS. Mr. President, we object to that question as being leading. We object to the line of testimony because, insofar as we have undertaken to develop the evidence, and as far as we think it can be developed, the issues are these, that the respondent took jurisdiction of this matter when, as a matter of fact, he had no jurisdiction under the law. No hearing was given to the defendant, and then later on the matter went into the bankruptcy court, and this proceeding in equity was then dismissed, and the same parties were appointed receiver and attorney, respectively, in the bankruptcy court. Without regard to the condition of the business, the point is, in the first instance, a matter of jurisdiction.

The PRESIDING OFFICER. The managers on the part of the House insist that the court had no jurisdiction in the matter at all?

Mr. Manager SUMNERS. That is right.

The PRESIDING OFFICER. And regardless of the condition?

Mr. Manager SUMNERS. That is right. That issue was never touched by anybody. We are going to have to go over this case. We cannot afford to take the testimony of this auditor. We would have to have an opportunity to check up on that case, and see whether, with all respect to this witness, the witness' testimony is correct or not.

The PRESIDING OFFICER. The Chair will permit this question to be answered, but other questions along this line will be subject to objection by the managers on the part of the House.

The reporter repeated the pending question as follows:

Q. Were you, during the 2 years you were connected with the company, ever able to get from anyone connected with the company an intelligent statement or set-up of the assets of the liabilities?—A. No, sir.

Mr. Manager SUMNERS. Mr. President, in order to get the record straight, we respectfully request that the question and answer be stricken from the record.

The PRESIDING OFFICER. The motion is overruled.

By Mr. HANLEY:

Q. Were you ever paid for your services?—A. No, sir.

Mr. HANLEY. That is all. Cross-examine.

Cross-examination by Mr. Manager SUMNERS:

Q. Mr. Byers, you have no personal knowledge of the assets of this corporation, have you?—A. I have not actually seen the assets.

Q. You have no personal knowledge of what assets this corporation had, have you?—A. I have personal knowledge of the values.

Q. If you have never seen the assets, how can you tell anything about their values?—A. For the reason that as to all the operations reported on there was always heavy loss.

Q. All the railroads in the country would be valueless according to that system, would they not?

Mr. LINFORTH. Mr. President, I submit these questions are all argumentative. Counsel should not argue with the witness.

The PRESIDING OFFICER. On cross-examination, counsel has a good deal of latitude.

By Mr. Manager PERKINS:

Q. You were with the company 2 years, were you not?—A. I was not permanently with them. I was merely visiting.

Q. You only visited this company?—A. My arrangement with the president was that I was to come over and supervise and assist the bookkeeper.

Q. You were not the bookkeeper?—A. Oh, no.

Q. You supervised? How often did you get there?—A. Three and four times a week; sometimes less than that.

Q. And during all the time you were coming there, 3 or 4 times a week, it was a going concern, was it not?—A. The doors were open; yes, sir.

Q. I said, "It was a going concern."—A. Yes.

Mr. Manager PERKINS. That is all.

The PRESIDING OFFICER. Are there further questions? If not, the witness will be excused.

(The witness retired from the stand.)

Mr. LINFORTH. Mr. President, there are several witnesses whom we have in attendance whose testimony would be merely cumulative. Due to the stress under which the Senate is working, with emergency measures and the like, we have concluded not to call those witnesses, and I take it that there will be no reflection, so far as the honorable Senate is concerned, for our not doing so, having brought them this distance to testify. If that is correct, I am now prepared to announce that we have one short witness, who will not take longer than 10 minutes, if we conclude to call him, and then the respondent; and then we will be prepared to rest. Mr. President, with this statement, I would appreciate it very much if the honorable Senators could see their way clear at this time to take a recess until tomorrow morning.

RECESS

Mr. ASHURST. Mr. President, I move that the Senate, sitting as a Court of Impeachment, take a recess until 10 o'clock tomorrow morning.

The motion was agreed to; and (at 6 o'clock p.m.) the Senate, sitting as a Court of Impeachment, took a recess until tomorrow, Tuesday, May 23, 1933, at 10 o'clock a.m.

LEGISLATIVE SESSION

The Senate, pursuant to the order for the recess entered on Saturday, May 20, resumed legislative session.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Latta, one of his secretaries.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Haltigan, one of its clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5480) to provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate the following resolution of the House of Representatives of the State of Illinois, which was referred to the Committee on Banking and Currency:

STATE OF ILLINOIS,
OFFICE OF THE SECRETARY OF STATE.

To all to whom these presents shall come, greeting:

I, Edward J. Hughes, secretary of state of the State of Illinois, do hereby certify that the following and hereto attached is a true photostatic copy of House Resolution No. 55, the original of which is now on file and a matter of record in this office.

In testimony whereof I hereto set my hand and cause to be affixed the great seal of the State of Illinois. Done at the city of Springfield this 19th day of May A.D. 1933.

[SEAL] EDWARD J. HUGHES,
Secretary of State.

House Resolution 55

Whereas hundreds of thousands of depositors in State and National banks throughout the State of Illinois, and millions of depositors in banks throughout the Nation, have their moneys tied up in closed banks; and

Whereas heretofore only a small percentage of such deposits has been paid by some of the closed banks to the depositors at great cost and expense to the depositors on account of exorbitant fees paid to receivers and attorneys for receivers; and

Whereas in order to reestablish the confidence of the people at large in the State and Nation and to restore confidence in banks and bankers, as well as to stimulate business in this State and Nation, it is of vital importance that some Federal agency be created to take over all the assets and liabilities of closed banks in the State and Nation and pay all the depositors in said closed banks 100 cents on the dollar: Now, therefore, be it

Resolved by the House of Representatives of the Fifty-eighth General Assembly of the State of Illinois, That this body urgently request the Congress of the United States at its present session to enact such legislation and make such appropriations as may be necessary to put into effect the suggestions contained herein; and be it further

Resolved, That copies of this preamble and resolution be sent forthwith to the President of the United States, the President of the Senate, the Speaker of the House, and to each Senator and Congressman from Illinois.

I hereby certify the foregoing to be a true copy of a resolution adopted by the House of Representatives of the Fifty-eighth General Assembly of the State of Illinois on May 17, 1933.

CHAS. P. CUSEY,
Clerk of the House of Representatives.

The VICE PRESIDENT also laid before the Senate the following joint resolution of the Legislature of the State of Wisconsin, which was referred to the Committee on Finance:

STATE OF WISCONSIN.

Joint resolution memorializing Congress to enact laws providing for the use of ethyl alcohol in all motor fuels

Whereas at present low prices it is impossible for farmers to meet insurance, interest, and taxes, and a continuation of this condition will result not only in depriving the majority of farmers of their farms and life savings but in making impossible any substantial improvement in general economic conditions; and

Whereas the only real solution to this situation lies in an increased demand, market, and price for farm products; and

Whereas legislation providing that motor fuel must be blended with alcohol made from farm products grown in this country would increase the demand and price for farm products; and

Whereas the blending of gasoline with alcohol made from farm products has proved to be a more efficient motor fuel than that now in use, and would result in placing this country on an import rather than on an export basis and would greatly increase the price of farm products; and

Whereas 14 foreign countries have already passed legislation requiring such blending of motor fuels: Now, therefore, be it

Resolved by the senate (the assembly concurring), That the Legislature of Wisconsin hereby respectfully memorializes the Congress of the United States to pass a law providing that all petroleum products used as a fuel in internal-combustion engines shall be blended with ethyl alcohol made from agricultural products grown within the United States; be it further

Resolved, That properly attested copies of this resolution be sent to President Roosevelt, to both Houses of the Congress of the United States, and to each Representative and Senator from Wisconsin.

THOMAS J. O'MALLEY,
President of the Senate.
R. A. COBBAN,
Chief Clerk of the Senate.
C. T. YOUNG,
Speaker of the Assembly.
JOHN J. SLOCUM,
Chief Clerk of the Assembly

The VICE PRESIDENT also laid before the Senate a cablegram embodying a concurrent resolution adopted by the Legislature of the Territory of Hawaii, which was referred to the Committee on Territories and Insular Affairs, as follows:

HONOLULU, *May 21, 1933.*

Hon. JOHN N. GARNER,
President Senate, Washington, D.C.:

We have the honor to transmit the following concurrent resolution unanimously adopted this day by the Legislature of the Territory of Hawaii:

"Whereas it has come to the attention of this legislature through items in the public press and otherwise that action is contemplated in Washington toward the amendment of the Hawaiian organic act removing the 3-year residence qualification for the Governor of Hawaii; and

"Whereas it is well known that there are among those who have resided in this Territory during the preceding 3 years numerous men of the Democratic Party who are fully and ably qualified for this high office; and

"Whereas it is also the firm conviction of this legislature that it would result most unfairly and unfortunately for the Territory should a nonresident of necessity unfamiliar with local conditions and problems be appointed to this office; and

"Whereas the threatened procedure would be absolutely contrary to all principles of American self-government, in the fulfill-

ment of which principles this Territory has heretofore given an excellent account of itself: Now, therefore, be it

"*Resolved by the Senate of the Territory of Hawaii, seventeenth regular session (the house of representatives concurring)*, That on behalf of the people of this Territory this legislature earnestly protests against any action by the Congress of the United States of America toward the elimination of the 3-year residence qualification for the Governor of this Territory; and be it further

"*Resolved*, That certified copies of this resolution be forwarded to the President of the United States of America, to each of the two Houses of Congress, to the Secretary of the Interior, and to the Delegate to Congress from Hawaii."

GEO. P. COOKE,
President of the Senate.
HERBERT N. AHUNA,
Speaker House of Representatives.

The VICE PRESIDENT also laid before the Senate resolutions adopted by the Galveston Boosters' Club and the Kiwanis Club, both of Galveston; the Chambers of Commerce of Buffalo, Dalhart, and Hearne; the board of directors of the Lamar County Chamber of Commerce; and the Commissioners' Courts of the Counties of Galveston, McCulloch, and Wood, all in the State of Texas, endorsing the program of President Roosevelt and favoring the inauguration of a public-works program for unemployment relief providing highway construction in the State of Texas, which were referred to the Committee on Finance.

He also laid before the Senate a resolution adopted by Hope Council, No. 1, Sons and Daughters of Liberty, of Washington, D.C., favoring the prompt passage of House bill 4114, the so-called "Dies bill", establishing a fixed quota pertaining to the immigration of aliens, which was referred to the Committee on Immigration.

He also laid before the Senate a resolution adopted by John A. Hadley Chapter, No. 3, Eighth Army Corps Association of the United States, Los Angeles, Calif., protesting against the curtailment or elimination of pensions of Spanish-American War veterans, which was referred to the Committee on Pensions.

VETERANS' LEGISLATION

Mr. WALSH. Mr. President, I present resolutions adopted by the mayor and City Council of Brockton, Mass., favoring the further study of veterans' legislation toward the end of a favorable adjustment, and ask that they be printed in full in the RECORD and appropriately referred.

There being no objection, the resolutions were referred to the Committee on Finance and ordered to be printed in the RECORD, as follows:

CITY OF BROCKTON,
COMMONWEALTH OF MASSACHUSETTS,
In Common Council, May 4, 1933.

Whereas it has come to the attention of the mayor and City Council of the City of Brockton that unwarranted misery and suffering will be caused disabled veterans of the Spanish-American and World Wars due to the operation of the act to curtail current expenses of benefits to war veterans recently enacted by the Federal Government, including many veterans who incurred their disabilities or disease in line of duty while in the active military service; and

Whereas the reduction in benefits from the Federal Government will compel many beneficiaries to apply to our local relief agencies to enable their families to obtain sufficient sustenance, thereby shifting the burden of providing for ex-soldiers from the National Government to the local government, thus departing from the established custom which has been in existence since the days of the Revolutionary War that men who served the Federal Government in time of stress should be cared for by the United States; and

Whereas this council believes that these unwarranted and drastic cuts in compensation now being paid to veterans does not meet with the approval of the American public in general, and believing that if the matter was brought to the personal attention of the President of the United States that immediate legislation would be enacted to bring about a more equitable and fair adjustment of veterans' benefits: Therefore be it

Resolved, That the mayor and City Council of the City of Brockton hereby goes on record in favor of a study of the entire matter of veterans' legislation in the hope that such study will bring about a favorable adjustment to the end that no veteran suffering from a disability incurred in line of duty while in the active military and naval service of the United States shall be called upon to bear a greater sacrifice than other classes of the American public, bearing in mind the hardships and tribulations that they endured during the period of war; and be it further

Resolved, That a copy of these resolutions be forwarded to the President of the United States, United States Senators from Massachusetts, and the Member of the United States House of Representatives from this district.

In common council May 4, 1933, passed and sent up for concurrence.

HAROLD C. BYRAM, *Clerk.*

In board of aldermen May 8, 1933, passed in concurrence.

J. ALBERT SULLIVAN, *Clerk.*

Approved May 11, 1933.

HORACE C. BAKER, *Mayor.*

A true copy. Attest:

[SEAL] J. ALBERT SULLIVAN, *City Clerk.*

THE FOREIGN DEBT

Mr. WALSH. Mr. President, I present and ask that there be printed in the CONGRESSIONAL RECORD and appropriately referred resolutions I have just received from the John Boyle O'Reilly Club, of West Newton, Mass., in opposition to cancelation or further reduction of foreign war debts due the American people.

There being no objection, the resolutions were referred to the Committee on Finance and ordered to be printed in the RECORD, as follows:

Hon. DAVID I. WALSH,
United States Senator, Washington, D.C.

DEAR SIR: The resolutions which follow were adopted by a unanimous vote at a meeting of the John Boyle O'Reilly Club, which was held at West Newton, Mass., on Wednesday evening, May 10.

We have been directed to forward the resolutions to you for your information and consideration. The members hope that you will take a firm stand against the further reduction or cancelation of foreign war debts.

Respectfully yours,

TIMOTHY O'CONNELL, *Chairman.*
PATRICK J. GLEASON, *Secretary,*
78 Walnut Street, Wellesley Hills, Mass.

Whereas Mr. Ramsay MacDonald, the British Premier, in public utterances while in this country expressed his desire for "international harmony", decried "economic retaliation", and professed the interest of himself and his Government in world peace and unity; and

Whereas the Government of which Mr. MacDonald is head has been and is carrying on a relentless economic war against the people of the Irish Free State; and

Whereas the British Government declines to submit to an independent tribunal Britain's claim to Irish land annuities and rejects with scorn Ireland's demand for restitution of overtaxation of more than £360,000,000, which, according to the finding of the Irish Financial Relations Committee, a body appointed by Britain, the Government in London has wrung from the taxpayers of Ireland since 1801: Therefore be it

Resolved, That we draw the attention of our National Government in Washington and of our fellow citizens generally to this striking difference between Mr. MacDonald's amicable statements and the belligerent attitude of his Government toward the people of the 26 counties of Ireland, known as the "Irish Free State"; and be it

Resolved, That we brand as insincere the statements of Mr. Ramsay MacDonald regarding "economic harmony" and "world peace", and that we declare his disapproval of "economic retaliation" is contradicted by the attempt of his Government to throttle the people of the Irish Free State by economic aggression; and be it also

Resolved, That as loyal citizens sincerely interested in the welfare of the United States, we request the Members of both Houses of Congress to oppose the cancelation or further reduction of foreign war debts due to the American people, because cancelation or downward revision of those debts would transfer Europe's burden to the shoulders of American taxpayers of the present time and of generations to come; and we exhort our fellow citizens generally to prevent any such ruinous development by vigilantly guarding their rights and vigorously asserting their claim to what belongs to them.

CAPITAL STRUCTURE OF THE RAILROADS

Mr. WALSH. Mr. President, I present and ask to have printed in full in the RECORD and appropriately referred a communication from Massachusetts Lodge, No. 229, of the Brotherhood of Railroad Clerks, urging that the capital structure of the railroads be revised.

There being no objection, the communication was referred to the Committee on Interstate Commerce and ordered to be printed in the RECORD, as follows:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES,
COMMONWEALTH LODGE, NO. 229,
Worcester, Mass., May 15, 1933.

Hon. DAVID I. WALSH,
Senator from Massachusetts, Washington, D.C.

DEAR SIR: I am writing you on behalf of the members of Commonwealth Lodge, No. 229, of Brotherhood of Railroad Clerks relative to the railroad legislation now pending before Congress.

We are given to understand that the main purpose of this legislation is to effect economy on the railroads. We are informed that the means to attain this end will be by dismissing thousands of employees who are now at work.

In view of the fact that the Government has been doing all within its power to provide jobs for some of the people who are now out of work, does it seem logical to now proceed to throw out those who now have work?

It is said that the financial structure of the railroads must be protected and made secure. With that we agree, but we ask in all sincerity if you think that labor should bear all the burden.

We are firmly of the opinion that the capital structure of the railroads should be revised and that this is one of the avenues through which economy should be made.

It is conceded by all that the main objective now is to increase the purchasing power of the masses and that now that the skies seem to be brightening it would seem too bad if this proposed law should have the effect of destroying the purchasing power of a large number of railroad employees.

Is it not reasonable to suppose that if the now apparent upturn in business should continue to increase that the added revenue that would flow to the railroads would make it unnecessary for a program so drastic as is now proposed? If this be true, might it not be the part of wisdom to proceed in a less drastic manner and thereby safeguard the jobs of thousands?

We are not unmindful of the superhuman efforts of our President to restore prosperity to the country and the loyal support given him by the Members of Congress. May we take this opportunity to extend to you our sincere appreciation of your assistance in these efforts?

In conclusion may we presume to suggest that you give this matter your careful consideration to the end that those who are now enjoying the blessing of peace and contentment derived from the fruits of their labor may be allowed to continue to do so?

Yours sincerely,

[SEAL] J. A. McCUM, *President.*

NAVAL AND MARINE HOSPITALS AT CHELSEA, MASS.

Mr. WALSH. Mr. President, I present and ask that there be printed in full in the CONGRESSIONAL RECORD and appropriately referred resolutions I have just received from the secretary of the Commonwealth of Massachusetts, relative to the United States Naval Hospital and the United States Marine Hospital at Chelsea.

There being no objection, the resolutions were referred to the Committee on Naval Affairs and ordered to be printed in the RECORD, as follows:

Resolutions relative to the United States Naval Hospital and the United States Marine Hospital at Chelsea

Whereas the United States Naval Hospital and the United States Marine Hospital in the city of Chelsea have for many years rendered invaluable service in the care and treatment of veterans and employees of the Federal Government and are equipped with excellent medical and surgical facilities and apparatus and skilled personnel; and

Whereas said hospitals have established a notable record for efficient and humanitarian work in this section of the United States, and have made an indelible impression upon the citizens of our Commonwealth for the admirable service rendered during a long period of years: Therefore be it

Resolved, That the senate respectfully petitions the President of the United States, in the interests of the public health and convenience, to continue these hospitals as necessary institutions of our Federal Government in the performance of the efficient and humanitarian functions for which they are especially adapted and fitted, because of location, equipment, and personnel, as clearly demonstrated by their long record of public service; and be it further

Resolved, That copies of these resolutions be forwarded forthwith by the secretary of the Commonwealth to the President of the United States, to the presiding officers of both branches of Congress, and to the Members thereof representing this Commonwealth.

In senate, adopted, May 11, 1933.

IRVING N. HAYDEN, *Clerk.*

A true copy. Attest:

F. W. COOK,
Secretary of the Commonwealth.

REPORTS OF COMMITTEES

Mr. BYRNES, from the Committee to Audit and Control the Contingent Expenses of the Senate, to which was referred the resolution (S.Res. 82) authorizing a further expenditure in connection with the impeachment trial of Judge Harold Louderback, reported it without amendment.

Mr. DILL, from the Committee on Interstate Commerce, to which was referred the bill (S. 1580) to relieve the existing national emergency in relation to interstate railroad transportation, and to amend sections 5, 15a, and 19a of the Interstate Commerce Act, as amended, reported it with amendments and submitted a report (No. 87) thereon.

Mr. KING, from the Committee on the Judiciary, to which was referred the bill (S. 1581) to amend the act approved July 3, 1930 (46 Stat. 1005), authorizing commissioners or members of international tribunals to administer oaths, etc., reported it with amendments and submitted a report (No. 88) thereon.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. VANDENBERG:

A bill (S. 1740) to extend certain benefits of the Public Health Service to certain seamen, and for other purposes; to the Committee on Commerce.

By Mr. NYE:

A bill (S. 1741) to stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range, and for other purposes; to the Committee on Public Lands and Surveys.

By Mr. DILL:

A bill (S. 1742) granting consent of Congress to Ernest N. Hutchinson, Otto A. Case, and A. C. Martin to construct, maintain, and operate a bridge across Deception Pass between Whidby Island and Fidalgo Island in the State of Washington; to the Committee on Commerce.

A bill (S. 1743) authorizing the extension of time for the payment of governmental fees in the nature of purchase price payable to the United States Government under applications for commutations of homestead entries, the purchase of timber lands; and the purchase of coal lands of the United States; to the Committee on Public Lands and Surveys.

By Mr. TRAMMELL:

A bill (S. 1744) enabling certain farmers and fruit growers to receive the benefits of the Federal Farm Loan Act and amendments thereto and the Emergency Farm Mortgage Act of 1933; to the Committee on Banking and Currency.

By Mr. McNARY:

A bill (S. 1745) granting the consent of Congress to the State of Oregon to construct, maintain, and operate a toll bridge across the Umpqua River at or near Reedsport, Douglas County, Oreg.;

A bill (S. 1746) granting the consent of Congress to the State of Oregon to construct, maintain, and operate a toll bridge across Yaquima Bay at or near Newport, Lincoln County, Oreg.;

A bill (S. 1747) granting the consent of Congress to the State of Oregon to construct, maintain, and operate a toll bridge across Alsea Bay at or near Walport, Lincoln County, Oreg.;

A bill (S. 1748) granting the consent of Congress to the State of Oregon to construct, maintain, and operate a toll bridge across Coos Bay at or near North Bend, Coos County, Oreg.; and

A bill (S. 1749) granting the consent of Congress to the State of Oregon to construct, maintain, and operate a toll bridge across the Siuslaw River at or near Florence, Lane County, Oreg.; to the Committee on Commerce.

AMENDMENTS TO PUBLIC-WORKS BILL

Mr. BARBOUR submitted an amendment intended to be proposed by him to Senate bill 1712, the industrial control and public-works bill, which was ordered to lie on the table and to be printed.

Mr. WALSH and Mr. DIETERICH each submitted an amendment intended to be proposed by them, respectively, to Senate bill 1712, the industrial control and public-works bill, which were referred to the Committee on Finance and ordered to be printed.

REGULATION OF BANKING

Mr. VANDENBERG. Mr. President, the pending amendment to the banking bill is my proposal dealing with the immediate application of an insurance formula. The mutual savings banks have requested that the amendment be changed to permit them to qualify within the amendment.

The entire amendment has now been canvassed on both sides of the Senate by a number of Members of the Senate, and a final reprint, in conclusive form, is now available. I ask unanimous consent that this final print, identified as printed on May 15, 1933, be the pending amendment to the bill, and that it be printed in the RECORD.

The PRESIDING OFFICER (Mr. ROBINSON of Indiana in the chair). Is there objection? The Chair hears none, and it is so ordered.

The amendment is as follows:

Amendment proposed by Mr. VANDENBERG to the bill (S. 1631) to provide for the safer and more effective use of the assets of Federal Reserve banks and of national banking associations, to regulate interbank control, to prevent the undue diversion of funds into speculative operations, and for other purposes, viz:

On page 45, after line 3, insert the following new section:

"SEC. 12C. (a) There is hereby created a Temporary Federal Bank Deposit Insurance Fund (hereinafter referred to as the 'Fund'), which shall become operative on July 1, 1933, and whose duty it shall be to insure deposits as hereinafter provided until July 1, 1934.

"(b) Each member bank licensed before July 1, 1933, by the Secretary of the Treasury, pursuant to the authority vested in him by the proclamation of the President issued March 10, 1933, shall, on or before July 1, 1933, become a member of the Fund; each member bank so licensed after such date, and each State bank or trust company which becomes a member of the Federal Reserve System after such date, shall, upon being so licensed or so admitted to membership, become a member of the Fund; and any State bank or trust company and/or mutual savings bank which is not a member of the Federal Reserve System may, upon application therefor, become a member of the Fund on or before January 1, 1934, if such application is accompanied by a certificate of the State banking authority that such State bank or trust company or mutual savings bank is, on the date of such application, solvent with respect to its unrestricted deposits.

"(c) The Fund shall insure the amounts owed to each of the depositors of each of its members, but not to exceed $2,500 in the case of any one depositor; but the provisions of this section shall not apply to any impounded deposit or any impounded portion thereof. Any restrictions heretofore or hereafter proclaimed by the Secretary of the Treasury shall not render a deposit ineligible for insurance.

"(d) Each member of the Fund which shall become a member on or before July 1, 1933, shall file with the Fund on or before such date, a certified statement under oath showing the number of its depositors and the total amount of its deposits as of June 15, 1933, which are eligible for insurance under this section, together with a certified check in an amount equal to one half of 1 percent of the total amount of the deposits so certified; and each member bank, State bank, and trust company which shall become a member of the Fund after July 1, 1933, shall at the time of its admission to membership file with the Fund such a statement showing the number of its depositors and the total amount of its deposits as of the 15th day of the month preceding the month in which it was so admitted, which are eligible for insurance under this section, together with a certified check in an amount equal to one half of 1 percent of the total amount of the deposits so certified. A similar statement shall be filed by each such member on January 1, 1934, showing the number of its depositors and the total amount of its deposits as of December 15, 1933, which are eligible for such insurance, together with a certified check in an amount equal to one half of 1 percent of the increase, if any, in the total amount of such deposits since the date covered by the statement filed upon its admission to membership in the Fund.

"(e) If at any time prior to July 1, 1934, the Fund requires additional funds with which to meet its obligations under this section, each member of the Fund shall be subject to one additional assessment only in an amount not exceeding the total amount theretofore paid to the Fund by such member.

"(f) During the period that deposits are insured under this section, no member of the Fund shall pay interest at a rate in excess of 2½ percent per annum on the amount of any of its deposits so insured.

"(g) Whenever any member of the Fund shall have been closed by the appropriate legal authorities, the Fund shall pay to the depositors of such member as soon as possible thereafter the amount of their deposits on the date of such closing which are insured under this section. After such payment the Fund shall be subrogated to all rights against the closed bank of the owners of such insured deposits and shall be entitled to receive the same dividends from the proceeds of the assets of such closed bank as would have been payable to each such depositor with respect to his insured deposit.

"(h) In the event that the Fund shall be unable to pay any of its obligations, when due, the Secretary of the Treasury shall pay the amount thereof, which is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated. If any such advances are made by the Secretary of the Treasury, they shall be subsequently reimbursed to the Treasury by the Federal Bank Deposit Insurance Corporation by means of a special annual assessment on the members of the Fund of one fourth of 1 percent of the total insured deposits of such members on January 1, 1934, which the corporation is hereby authorized to collect until such time as such advances shall have been fully reimbursed, but no such assessment shall be made after the expiration of 10 years after July 1, 1934.

"(i) In the event that the Fund shall pay all of its obligations without recourse to the provisions of subsection (h) of this section, any balance remaining in the Fund on July 1, 1934, shall be transferred to the Federal Bank Deposit Insurance Corporation and credited to its deposit insurance account.

"(j) The Fund shall be a body corporate with power to adopt and use a corporate seal; to make contracts; to sue and be sued, complain and defend in any court of law or equity, State or Federal; to appoint by its board of directors, which shall consist of the members of the Federal Reserve Board, such officers and employees as may be necessary to carry out the powers granted to the Fund by this section, to define their duties, fix their compensation, require bonds of them and fix the penalty thereof, and to dismiss at pleasure such officers or employees; to prescribe by its board of directors bylaws, not inconsistent with law, regulating the manner in which its general business may be conducted and the privileges granted to it by law may be exercised and enjoyed; and to exercise by its board of directors, or duly authorized officers or agents, all powers specifically granted by this section and such incidental powers as shall be necessary to carry out the powers so granted. No member of the board of directors of the Fund shall receive any additional compensation for his services as such member.

"(k) There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $10,000,000, which shall be made immediately available to the Fund for the purpose of paying any of its expenses or obligations.

"(l) All functions of the Fund shall cease on July 1, 1934; except that it may proceed to collect any liquidating dividends to which it may be entitled under subsection (g) of this section. The net proceeds of all such collections after July 1, 1934, shall be paid to the Federal Bank Deposit Insurance Corporation for credit to its deposit insurance account, unless there is a balance due the Treasury under subsection (h) of this section, in which event such collections shall first be paid into the Treasury to the extent of such balance."

On page 45, line 3, strike out the quotation marks.

MIGRATORY BIRD CONSERVATION COMMISSION

Mr. McNARY. Mr. President, in the temporary absence of the Senator from Arkansas [Mr. ROBINSON], I desire to propose the following order. It meets with his approval, and I should like to have it entered at this time.

The PRESIDING OFFICER. Let it be read for the information of the Senate.

The Chief Clerk read as follows:

The Chair appoints the Senator from Nevada [Mr. PITTMAN] as a member of the Migratory Bird Conservation Commission to fill the vacancy created by the resignation of the Senator from Missouri, Mr. Hawes.

The PRESIDING OFFICER. The question is on agreeing to the order.

Mr. NORRIS. Mr. President, I should like to have the order read again.

The PRESIDING OFFICER. The clerk will read, as requested.

The Chief Clerk read as follows:

The Chair appoints the Senator from Nevada [Mr. PITTMAN]——

Mr. NORRIS. That is far enough. That is not an order. The Chair has not appointed him. We cannot say what the Chair has done. As a matter of fact, the Chair has not done anything of the kind. It does not make it any stronger if we pass the resolution, if it might be called that.

Mr. McNARY. Mr. President, there is a vacancy on the Commission due to the retirement of former Senator Hawes, of Missouri. This is an order I want the Chair himself to make. It does not require a vote. It is simply an order to be made, and I have requested it in the absence of the Senator from Arkansas, at his request.

Mr. NORRIS. I am not objecting to the appointment of the Senator from Nevada to fill the vacancy. We are trying to vote an order through the Senate when the order says, "The Chair appoints the Senator from Nevada", and so forth. If it is desired to have the Senate do it, I have no objection.

Mr. McNARY. It is not necessary for the Senate to do it. It is an order prepared for the Chair to make himself in his own way. It does not require action of the Senate at all. I simply sent it to the Chair to have it entered as his order.

Mr. NORRIS. If the Chair wants to do that, I have no objection.

The PRESIDING OFFICER. The Chair appoints the Senator from Nevada [Mr. PITTMAN] as a member of the Migratory Bird Conservation Commission to fill the vacancy created by the resignation of the Senator from Missouri, Mr. Hawes.

Mr. NORRIS. I thank the Chair! [Laughter.]

Mr. WALCOTT. Mr. President, before we leave the subject, if I can have just a moment for the purpose, I should like to explain the order of the Chair and its significance at this time.

The executive Commission to enforce the Migratory Bird Treaty Act is an important body. A special meeting of the Commission has been called for tomorrow at 11:30. There is a vacancy on the Commission, created by the resignation from the Senate of Senator Hawes, and the powers that be are very anxious to have the Senator from Nevada [Mr. PITTMAN] fill that vacancy.

Probably there is no one in the Senate as well qualified to take that place as the Senator from Nevada. He is very much in earnest about the work of conservation and is very well qualified for it and can and will be present at the meeting tomorrow. That is why there was some haste in getting this appointment through—because during the last few days a very important program has been laid out by several conservationists in different parts of the country that will be seriously considered tomorrow by the Commission and, I hope, will be approved.

PROTECTION OF INVESTORS—CONFERENCE REPORT

Mr. FLETCHER. Mr. President, I present a conference report which was adopted in the House today. I should like to have it considered now. I do not think it will lead to any debate.

The report presented by Mr. FLETCHER is as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5480) to provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

"TITLE I

"SHORT TITLE

"SECTION 1. This title may be cited as the 'Securities Act of 1933.'

"DEFINITIONS

"SEC. 2. When used in this title, unless the context otherwise requires—

"(1) The term 'security' means any note, stock, Treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of interest in property, tangible or intangible, or, in general, any instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing.

"(2) The term 'person' means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof. As used in this paragraph the term 'trust' shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

"(3) The term 'sale', 'sell', 'offer to sell', or 'offer for sale' shall include every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value; except that such terms shall not include preliminary negotiations or agreements between an issuer and any underwriter. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be a sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security.

"(4) The term 'issuer' means every person who issues or proposes to issue any security or who guarantees a security either as to principal or income; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term 'issuer' means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term 'issuer' means the person by whom the equipment or property is or is to be used.

"(5) The term 'Commission' means the Federal Trade Commission.

"(6) The term 'Territory' means Alaska, Hawaii, Puerto Rico, the Philippine Islands, Canal Zone, the Virgin Islands, and the insular possessions of the United States.

"(7) The term 'interstate commerce' means trade or commerce in securities or any transportation or communication relating thereto among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia.

"(8) The term 'registration statement' means the statement provided for in section 6, and includes any amendment thereto and any report, document, or memorandum accompanying such statement or incorporated therein by reference.

"(9) The term 'write' or 'written' shall include printed, lithographed, or any means of graphic communication.

"(10) The term 'prospectus' means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio, which offers any security for sale; except that (a) a communication shall not be deemed a prospectus if it is proved that prior to such communication a written prospectus meeting the requirements of section 10 was received, by the person to whom the communication was made, from the person making such communication or his principal, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of section 10 may be obtained and, in addition, does no more than identify the security, state the price thereof, and state by whom orders will be executed.

"(11) The term 'underwriter' means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this paragraph the term 'issuer' shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any

person under direct or indirect common control with the issuer.

"(12) The term 'dealer' means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

"EXEMPTED SECURITIES

"SEC. 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

"(1) Any security which, prior to or within 60 days after the enactment of this title, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to such 60 days;

"(2) Any security issued or guaranteed by the United States or any Territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory, or by any public instrumentality of one or more States or Territories exercising an essential governmental function, or by any corporation created and controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States, or by any national bank, or by any banking institution organized under the laws of any State or Territory, the business of which is substantially confined to banking and is supervised by the State or Territorial banking commission or similar official; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank;

"(3) Any note, draft, bill of exchange, or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding 9 months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

"(4) Any security issued by a corporation organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual;

"(5) Any security issued by a building and loan association, homestead association, savings and loan association, or similar institution, substantially all the business of which is confined to the making of loans to members (but the foregoing exemption shall not apply with respect to any such security where the issuer takes from the total amount paid or deposited by the purchaser, by way of any fee, cash value, or other device whatsoever, either upon termination of the investment at maturity or before maturity, an aggregate amount in excess of 3 percent of the face value of such security), or any security issued by a farmers' cooperative association as defined in paragraphs (12), (13), and (14) of section 103 of the Revenue Act of 1932;

"(6) Any security issued by a common carrier which is subject to the provisions of section 20a of the Interstate Commerce Act, as amended;

"(7) Certificates issued by a receiver or by a trustee in bankruptcy, with the approval of the court;

"(8) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia.

"(b) The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this title with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds $100,000.

"EXEMPTED TRANSACTIONS

"SEC. 4. The provisions of section 5 shall not apply to any of the following transactions:

"(1) Transactions by any person other than an issuer, underwriter, or dealer; transactions by an issuer not with or through an underwriter and not involving any public offering; or transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except transactions within 1 year after the last date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter (excluding in the computation of such year any time during which a stop order issued under sec. 8 is in effect as to the security), and except transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

"(2) Brokers' transactions, executed upon customers' orders on any exchange or in the open or counter market, but not the solicitation of such orders.

"(3) The issuance of a security of a person exchanged by it with its existing security holders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with such exchange; or the issuance of securities to the existing security holders or other existing creditors of a corporation in the process of a bona-fide reorganization of such corporation under the supervision of any court, either in exchange for the securities of such security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such security holders or creditors.

"PROHIBITIONS RELATING TO INTERSTATE COMMERCE AND THE MAILS

"SEC. 5. (a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

"(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell or offer to buy such security through the use or medium of any prospectus or otherwise; or

"(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

"(b) It shall be unlawful for any person, directly or indirectly—

"(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security registered under this title, unless such prospectus meets the requirements of section 10; or

"(2) to carry or to cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of section 10.

"(c) The provisions of this section relating to the use of the mails shall not apply to the sale of any security where the issue of which it is a part is sold only to persons resident within a single State or Territory, where the issuer of such securities is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory.

"REGISTRATION OF SECURITIES AND SIGNING OF REGISTRATION STATEMENT

"SEC. 6. (a) Any security may be registered with the Commission under the terms and conditions hereinafter provided, by filing a registration statement in triplicate, at least one of which shall be signed by each issuer, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions (or, if there is no board of directors or

persons performing similar functions, by the majority of the persons or board having the power of management of the issuer), and in case the issuer is a foreign or territorial person by its duly authorized representative in the United States; except that when such registration statement relates to a security issued by a foreign government, or political subdivision thereof, it need be signed only by the underwriter of such security. Signatures of all such persons when written on the said registration statements shall be presumed to have been so written by authority of the person whose signature is so affixed and the burden of proof, in the event such authority shall be denied, shall be upon the party denying the same. The affixing of any signature without the authority of the purported signer shall constitute a violation of this title. A registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered.

"(b) At the time of filing a registration statement the applicant shall pay to the Commission a fee of one one-hundredth of 1 percent of the maximum aggregate price at which such securities are proposed to be offered, but in no case shall such fee be less than $25.

"(c) The filing with the Commission of a registration statement, or of an amendment to a registration statement, shall be deemed to have taken place upon the receipt thereof, but the filing of a registration statement shall not be deemed to have taken place unless it is accompanied by a United States postal money order or a certified bank check or cash for the amount of the fee required under subsection (b).

"(d) The information contained in or filed with any registration statement shall be made available to the public under such regulations as the Commission may prescribe, and copies thereof, photostatic or otherwise, shall be furnished to every applicant at such reasonable charge as the commission may prescribe.

"(e) No registration statement may be filed within the first 40 days following the enactment of this act.

"INFORMATION REQUIRED IN REGISTERED STATEMENT

"SEC. 7. The registration statement, when relating to a security other than a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in schedule A, and when relating to a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in schedule B; except that the Commission may by rules or regulations provide that any such information or document need not be included in respect of any class of issuers or securities if it finds that the requirement of such information or document is inapplicable to such class and that disclosure fully adequate for the protection of investors is otherwise required to be included within the registration statement. If any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement. If any such person is named as having prepared or certified a report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Commission dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement. Any such registration statement shall contain such other information, and be accompanied by such other documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

"TAKING EFFECT OF REGISTRATION STATEMENTS AND AMENDMENTS THERETO

"SEC. 8. (a) The effective date of a registration statement shall be the twentieth day after the filing thereof, except as hereinafter provided, and except that in case of securities of any foreign public authority, which has continued the full service of its obligations in the United States, the proceeds of which are to be devoted to the refunding of obligations payable in the United States, the registration statement shall become effective 7 days after the filing thereof. If any amendment to any such statement is filed prior to the effective date of such statement, the registration statement shall be deemed to have been filed when such amendment was filed; except that an amendment filed with the consent of the Commission, prior to the effective date of the registration statement, or filed pursuant to an order of the Commission, shall be treated as a part of the registration statement.

"(b) If it appears to the Commission that a registration statement is on its face incomplete or inaccurate in any material respect, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice not later than 10 days after the filing of the registration statement, and opportunity for hearing (at a time fixed by the Commission) within 10 days after such notice by personal service or the sending of such telegraphic notice, issue an order prior to the effective date of registration refusing to permit such statement to become effective until it has been amended in accordance with such order. When such statment has been amended in accordance with such order the Commission shall so declare and the registration shall become effective at the time provided in subsection (a) or upon the date of such declaration, whichever date is the later.

"(c) An amendment filed after the effective date of the registration statement, if such amendment, upon its face, appears to the Commission not to be incomplete or inaccurate in any material respect, shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

"(d) If it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice, and after opportunity for hearing (at a time fixed by the Commission) within 15 days after such notice by personal service or the sending of such telegraphic notice, issue a stop order suspending the effectiveness of the registration statement. When such statement has been amended in accordance wtih such stop order the Commission shall so declare and thereupon the stop order shall cease to be effective.

"(e) The Commission is hereby empowered to make an examination in any case in order to determine whether a stop order should issue under subsection (d). In making such examination the Commission or any officer or officers designated by it shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the issuer, underwriter, or any other person, in respect of any matter relevant to the examination, and may, in its discretion, require the production of a balance sheet exhibiting the assets and liabilities of the issuer, or its income statement, or both, to be certified to by a public or certified accountant approved by the Commission. If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order.

"(f) Any notice required under this section shall be sent to or served on the issuer, or, in case of a foreign government or political subdivision thereof, to or on the underwriter, or, in the case of a foreign or Territorial person, to or on its duly authorized representative in the United States named in the registration statement, properly directed in each case of telegraphic notice to the address given in such statement.

"COURT REVIEW OF ORDERS

"SEC. 9. (a) Any person aggrieved by an order of the Commission may obtain a review of such order in the Circuit Court of Appeals of the United States, within any circuit wherein such person resides or has his principal place

of business, or in the Court of Appeals of the District of Columbia, by filing in such court within 60 days after the entry of such order, a written petition praying that the order of the Commission be modified or be set aside in whole or in part. A copy of such petition shall be forthwith served upon the Commission, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission. The finding of the Commission as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).

"(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

INFORMATION REQUIRED IN PROSPECTUS

"SEC. 10. (a) A prospectus—

"(1) when relating to a security other than a security issued by a foreign government or political subdivision thereof, shall contain the same statements made in the registration statement, but it need not include the documents referred to in paragraphs (28) to (32) inclusive of schedule A;

"(2) When relating to a security issued by a foreign government or political subdivision thereof shall contain the same statements made in the registration statement, but it need not include the documents referred to in paragraphs (13) and (14) of schedule B.

"(b) Notwithstanding the provisions of subsection (a)—

"(1) When a prospectus is used more than 13 months after the effective date of the registration statement, the information in the statements contained therein shall be as of a date not more than 12 months prior to such use.

"(2) There may be omitted from any prospectus any of the statements required under such subsection (a) which the Commission may by rules or regulations designate as not being necessary or appropriate in the public interest or for the protection of investors.

"(3) Any prospectus shall contain such other information as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

"(4) In the exercise of its powers under paragraphs (2) and (3) of this subsection, the Commission shall have authority to classify prospectuses according to the nature and circumstances of their use, and, by rules and regulations and subject to such terms and conditions as it shall specify therein, to prescribe as to each class the form and contents which it may find appropriate to such use and consistent with the public interest and the protection of investors.

"(c) The statements or information required to be included in a prospectus by or under authority of subsection (a) or (b), when written, shall be placed in a conspicuous part of the prospectus in type as large as that used generally in the body of the prospectus.

"(d) In any case where a prospectus consists of a radio broadcast, copies thereof shall be filed with the Commission under such rules and regulations as it shall prescribe. The Commission may by rules and regulations require the filing with it of forms of prospectuses used in connection with the sale of securities registered under this title.

"CIVIL LIABILITIES ON ACCOUNT OF FALSE REGISTRATION STATEMENT

"SEC. 11. (a) In case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue—

"(1) every person who signed the registration statement;

"(2) every person who was a director of (or person performing similar functions), or partner in, the issuer at the time of the filing of the part of the registration statement with respect to which his liability is asserted;

"(3) every person who, with his consent, is named in the registration statement as being or about to become a director, person performing similar functions, or partner;

"(4) every accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, who has with his consent been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement in such registration statement, report, or valuation, which purports to have been prepared or certified by him;

"(5) every underwriter with respect to such security.

"(b) Notwithstanding the provisions of subsection (a) no person, other than the issuer, shall be liable as provided therein who shall sustain the burden of proof—

"(1) that before the effective date of the part of the registration statement with respect to which his liability is asserted (A) he had resigned from or had taken such steps as are permitted by law to resign from, or ceased or refused to act in, every office, capacity, or relationship in which he was described in the registration statement as acting or agreeing to act, and (B) he had advised the Commission and the issuer in writing that he had taken such action and that he would not be responsible for such part of the registration statment; or

"(2) that if such part of the registration statement became effective without his knowledge, upon becoming aware of such fact, he forthwith acted and advised the Commission, in accordance with paragraph (1), and, in addition, gave reasonable public notice that such part of the registration statement had become effective without his knowledge; or

"(3) that (A) as regards any part of the registration statement not purporting to be made on the authority of an expert, and not purporting to be a copy of or extract from a report or valuation of an expert, and not purporting to be made on the authority of a public official document or statement, he had, after reasonable investigation, reasonable ground to believe, and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and (B) as regards any part of the registration statement purporting to be made upon his authority as an expert or purporting to be a copy of or extract from a report or valuation of himself as an expert, (i) he had, after reasonable investigation, reasonable ground to believe, and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements

therein not misleading, or (ii) such part of the registration statement did not fairly represent his statement as an expert or was not a fair copy of or extract from his report or valuation as an expert; and (C) as regards any part of the registration statement purporting to be made on the authority of an expert (other than himself) or purporting to be a copy of or extract from a report or valuation of an expert (other than himself), he had reasonable ground to believe, and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and that such part of the registration statement fairly represented the statement of the expert or was a fair copy of or extract from the report or valuation of the expert; and (D) as regards any part of the registration statement purporting to be a statement made by an official person or purporting to be a copy of or extract from a public official document, he had reasonable ground to believe, and did believe, at the time such part of the registration statement became effective, that the statements therein were true, and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and that such part of the registration statement fairly represented the statement made by the official person or was a fair copy of or extract from the public official document."

"(c) In determining, for the purpose of paragraph (3) of subsection (b) of this section, what constitutes reasonable investigation and reasonable ground for belief, the standard of reasonableness shall be that required of a person occupying a fiduciary relationship.

"(d) If any person becomes an underwriter with respect to the security after the part of the registration statement with respect to which his liability is asserted has become effective, then for the purposes of paragraph (3) of subsection (b) of this section such part of the registration statement shall be considered as having become effective with respect to such person as of the time when he became an underwriter.

"(e) The suit authorized under subsection (a) may be either (1) to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or (2) for damages if the person suing no longer owns the security.

"(f) All or any one or more of the persons specified in subsection (a) shall be jointly and severally liable, and every person who becomes liable to make any payment under this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment, unless the person who has become liable was, and the other was not, guilty of fraudulent misrepresentation.

"(g) In no case shall the amount recoverable under this section exceed the price at which the security was offered to the public.

"CIVIL LIABILITIES ARISING IN CONNECTION WITH PROSPECTUSES AND COMMUNICATIONS

"SEC. 12. Any person who—

"(1) sells a security in violation of section 5, or

"(2) sells a security (whether or not exempted by the provisions of section 3, other than paragraph (2) of subsection (a) thereof), by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission—

"shall be liable to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

"LIMITATION OF ACTIONS

"SEC. 13. No action shall be maintained to enforce any liability created under section 11 or section 12 (2) unless brought within 2 years after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section 12 (1), unless brought within 2 years after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under section 11 or section 12 (1) more than 10 years after the security was bona fide offered to the public.

"CONTRARY STIPULATIONS VOID

"SEC. 14. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this title or of the rules and regulations of the Commission shall be void.

"LIABILITY OF CONTROLLING PERSONS

"SEC. 15. Every person who, by or through stock ownership, agency, or otherwise, or who, pursuant to or in connection with an agreement or understanding with one or more other persons by or through stock ownership, agency, or otherwise, controls any person liable under section 11 or 12, shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable.

"ADDITIONAL REMEDIES

"SEC. 16. The rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity.

"FRAUDULENT INTERSTATE TRANSACTIONS

"SEC. 17. (a) It shall be unlawful for any person in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

"(1) to employ any device, scheme, or artifice to defraud, or

"(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

"(b) It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

"(c) The exemptions provided in section 3 shall not apply to the provisions of this section.

"STATE CONTROL OF SECURITIES

"SEC. 18. Nothing in this title shall affect the jurisdiction of the Securities Commission (or any agency or office performing like functions) of any State or Territory of the United States, or the District of Columbia, over any security or any person.

"SPECIAL POWERS OF COMMISSION

"SEC. 19. (a) The Commission shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this title, including rules and regulations governing registration statements and prospectuses for various classes of

securities and issues, and defining accounting and trade terms used in this title. Among other things, the Commission shall have authority, for the purposes of this title, to prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer; but insofar as they relate to any common carrier subject to the provisions of section 20 of the Interstate Commerce Act, as amended, the rules and regulations of the Commission with respect to accounts shall not be inconsistent with the requirements imposed by the Interstate Commerce Commission under authority of such section 20. The rules and regulations of the Commission shall be effective upon publication in the manner which the Commission shall prescribe.

"(b) For the purpose of all investigations which, in the opinion of the Commission, are necessary and proper for the enforcement of this title, any member of the Commission or any officer or officers designated by it are empowered to administer oaths and affirmations, subpena witnesses, take evidence, and require the production of any books, papers, or other documents which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States or any Territory at any designated place of hearing.

"INJUNCTION AND PROSECUTION OF OFFENSES

"SEC. 20. (a) Whenever it shall appear to the Commission, either upon complaint or otherwise, that the provisions of this title, or of any rule or regulation prescribed under authority thereof, have been or are about to be violated, it may, in its discretion, either require or permit such person to file with it a statement in writing, under oath, or otherwise, as to all the facts and circumstances concerning the subject matter which it believes to be in the public interest to investigate, and may investigate such facts.

"(b) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title, or of any rule or regulation prescribed under authority thereof, it may in its discretion, bring an action in any district court of the United States, United States court of any Territory, or the Supreme Court of the District of Columbia to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the necessary criminal proceedings under this title. Any such criminal proceeding may be brought either in the district wherein the transmittal of the prospectus or security complained of begins, or in the district wherein such prospectus or security is received.

"(c) Upon application of the Commission the district courts of the United States, the United States courts of any Territory, and the Supreme Court of the District of Columbia, shall also have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this title or any order of the Commission made in pursuance thereof.

"HEARINGS BY COMMISSION

"SEC. 21. All hearings shall be public and may be held before the Commission or an officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

"JURISDICTION OF OFFENSES AND SUITS

"SEC. 22. (a) The district courts of the United States, the United States courts of any Territory, and the Supreme Court of the District of Columbia shall have jurisdiction of offenses and violations under this title and under the rules and regulations promulgated by the Commission in respect thereto, and, concurrent with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by this title. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347). No case arising under this title and brought in any State court of competent jurisdiction shall be removed to any court of the United States. No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against it in the Supreme Court or such other courts.

"(b) In case of contumacy or refusal to obey a subpena issued to any person, any of the said United States courts, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Commission may issue to such person an order requiring such person to appear before the Commission, or one of its examiners designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

"(c) No person shall be excused from attending and testifying or from producting books, papers, contracts, agreements, and other documents before the Commission, or in obedience to the subpena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

"UNLAWFUL REPRESENTATION

"SEC. 23. Neither the fact that the registration statement for a security has been filed or is in effect nor the fact that a stop order is not in effect with respect thereto shall be deemed a finding by the Commission that the registration statement is true and accurate on its face or that it does not contain an untrue statement of fact or omit to state a material fact, or be held to mean that the Commission has in any way passed upon the merits of, or given approval to, such security. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representation contrary to the foregoing provisions of this section.

"PENALTIES

"SEC. 24. Any person who willfully violates any of the provisions of this title, or the rules and regulations promulgated by the Commission under authority thereof, or any person who willfully, in a registration statement filed under this title, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than $5,000 or imprisoned not more than 5 years, or both.

"JURISDICTION OF OTHER GOVERNMENT AGENCIES OVER SECURITIES

"SEC. 25. Nothing in this title shall relieve any person from submitting to the respective supervisory units of the

Government of the United States information, reports, or other documents that are now or may hereafter be required by any provision of law.

"SEPARABILITY OF PROVISIONS

"SEC. 26. If any provision of this act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

"SCHEDULE A

"(1) The name under which the issuer is doing or intends to do business;

"(2) the name of the State or other sovereign power under which the issuer is organized;

"(3) the location of the issuer's principal business office, and if the issuer is a foreign or Territorial person, the name and address of its agent in the United States authorized to receive notice;

"(4) the names and addresses of the directors or persons performing similar functions, and the chief executive, financial and accounting officers, chosen or to be chosen if the issuer be a corporation, association, trust, or other entity; of all partners, if the issuer be a partnership; and of the issuer, if the issuer be an individual; and of the promoters in the case of a business to be formed, or formed within 2 years prior to the filing of the registration statement;

"(5) the names and addresses of the underwriters;

"(6) the names and addresses of all persons, if any, owning of record or beneficially, if known, more than 10 percent of any class of stock of the issuer, or more than 10 percent in the aggregate of the outstanding stock of the issuer as of a date within 20 days prior to the filing of the registration statement;

"(7) the amount of securities of the issuer held by any person specified in paragraphs (4), (5), and (6) of this schedule, as of a date within 20 days prior to the filing of the registration statement, and, if possible, as of 1 year prior thereto, and the amount of the securities, for which the registration statement is filed, to which such persons have indicated their intention to subscribe;

"(8) the general character of the business actually transacted or to be transacted by the issuer;

"(9) a statement of the capitalization of the issuer, including the authorized and outstanding amounts of its capital stock and the proportion thereof paid up, the number and classes of shares in which such capital stock is divided, par value thereof, or if it has no par value, the stated or assigned value thereof, a description of the respective voting rights, preferences, conversion and exchange rights, rights to dividends, profits, or capital of each class, with respect to each other class, including the retirement and liquidation rights or values thereof;

"(10) a statement of the securities, if any, covered by options outstanding or to be created in connection with the security to be offered, together with the names and addresses of all persons, if any, to be allotted more than 10 percent in the aggregate of such options;

"(11) the amount of capital stock of each class issued or included in the shares of stock to be offered;

"(12) the amount of the funded debt outstanding and to be created by the security to be offered, with a brief description of the date, maturity, and character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a summarized statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect;

"(13) the specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof shall be stated;

"(14) the remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly, during the past year and ensuing year to (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them wherever such remuneration exceeded $25,000 during any such year;

"(15) the estimated net proceeds to be derived from the security to be offered;

"(16) the price at which it is proposed that the security shall be offered to the public or the method by which such price is computed and any variation therefrom at which any portion of such security is proposed to be offered to any persons or classes of persons, other than the underwriters, naming them or specifying the class. A variation in price may be proposed prior to the date of the public offering of the security, but the Commission shall immediately be notified of such variation;

"(17) all commissions or discounts paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made, in connection with the sale of such security. A commission paid or to be paid in connection with the sale of such security by a person in which the issuer has an interest or which is controlled or directed by, or under common control with, the issuer shall be deemed to have been paid by the issuer. Where any such commission is paid, the amount of such commission paid to each underwriter shall be stated;

"(18) the amount or estimated amounts, itemized in reasonable detail, of expenses, other than commissions specified in paragraph (17) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, authentication, and other charges;

"(19) the net proceeds derived from any security sold by the issuer during the 2 years preceding the filing of the registration statement, the price at which such security was offered to the public, and the names of the principal underwriters of such security;

"(20) any amount paid within 2 years preceding the filing of the registration statement or intended to be paid to any promoter and the consideration for any such payment;

"(21) the names and addresses of the vendors and the purchase price of any property, or goodwill, acquired or to be acquired, not in the ordinary course of business, which is to be defrayed in whole or in part from the proceeds of the security to be offered, the amount of any commission payable to any person in connection with such acquisition, and the name or names of such person or persons, together with any expense incurred or to be incurred in connection with such acquisition, including the cost of borrowing money to finance such acquisition;

"(22) full particulars of the nature and extent of the interest, if any, of every director, principal executive officer, and of every stockholder holding more than 10 percent of any class of stock or more than 10 percent in the aggregate of the stock of the issuer, in any property acquired, not in the ordinary course of business of the issuer, within 2 years preceding the filing of the registration statement or proposed to be acquired at such date;

"(23) the names and addresses of counsel who have passed on the legality of the issue;

"(24) dates of and parties to, and the general effect concisely stated of every material contract made, not in the ordinary course of business, which contract is to be executed in whole or in part at or after the filing of the registration statement or which contract has been made not more than 2 years before such filing. Any management contract or contract providing for special bonuses or profit-sharing arrangements, and every material patent or contract for a material patent right, and every contract by or with a public-utility company or an affiliate thereof, providing for the giving or receiving of technical or financial advice or service (if such contract may involve a charge to any party thereto

at a rate in excess of $2,500 per year in cash or securities or anything else of value), shall be deemed a material contract;

"(25) a balance sheet as of a date not more than 90 days prior to the date of the filing of the registration statement showing all of the assets of the issuer, the nature and cost thereof, whenever determinable, in such detail and in such form as the Commission shall prescribe (with intangible items segregated), including any loan in excess of $20,000 to any officer, director, stockholder or person directly or indirectly controlling or controlled by the issuer, or person under direct or indirect common control with the issuer. All the liabilities of the issuer in such detail and such form as the Commission shall prescribe, including surplus of the issuer showing how and from what sources such surplus was created, all as of a date not more than 90 days prior to the filing of the registration statement. If such statement be not certified by an independent public or certified accountant, in addition to the balance sheet required to be submitted under this schedule, a similar detailed balance sheet of the assets and liabilities of the issuer, certified by an independent public or certified accountant, of a date not more than 1 year prior to the filing of the registration statement, shall be submitted;

"(26) a profit and loss statement of the issuer showing earnings and income, the nature and source thereof, and the expenses and fixed charges in such detail and such form as the Commission shall prescribe for the latest fiscal year for which such statement is available and for the 2 preceding fiscal years, year by year, or, if such issuer has been in actual business for less than 3 years, then for such time as the issuer has been in actual business, year by year. If the date of the filing of the registration statement is more than 6 months after the close of the last fiscal year, a statement from such closing date to the latest practicable date. Such statement shall show what the practice of the issuer has been during the 3 years or lesser period as to the character of the charges, dividends, or other distributions made against its various surplus accounts, and as to depreciation, depletion, and maintenance charges, in such detail and form as the Commission shall prescribe, and if stock dividends or avails from the sale of rights have been credited to income, they shall be shown separately with a statement of the basis upon which the credit is computed. Such statement shall also differentiate between any recurring and nonrecurring income and between any investment and operating income. Such statement shall be certified by an independent public or certified accountant;

"(27) if the proceeds, or any part of the proceeds, of the security to be issued is to be applied directly or indirectly to the purchase of any business, a profit and loss statement of such business certified by an independent public or certified accountant, meeting the requirements of paragraph (26) of this schedule, for the 3 preceding fiscal years, together with a balance sheet, similarly certified, of such business, meeting the requirements of paragraph (25) of this schedule of a date not more than 90 days prior to the filing of the registration statement or at the date such business was acquired by the issuer if the business was acquired by the issuer more than 90 days prior to the filing of the registration statement;

"(28) a copy of any agreement or agreements (or if identic agreements are used, the forms thereof) made with any underwriter, including all contracts and agreements referred to in paragraph (17) of this schedule;

"(29) a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation of such opinion, when necessary, into the English language;

"(30) a copy of all material contracts referred to in paragraph (24) of this schedule, but no disclosure shall be required of any portion of any such contract if the Commission determines that disclosure of such portion would impair the value of the contract and would not be necessary for the protection of investors;

"(31) unless previously filed and registered under the provisions of this title, and brought up-to-date, (a) a copy of its articles of incorporation, with all amendments thereof and of its existing bylaws or instruments corresponding thereto, whatever the name, if the issuer be a corporation; (b) copy of all instruments by which the trust is created or declared, if the issuer is a trust; (c) a copy of its articles of partnership or association and all other papers pertaining to its organization, if the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization; and

"(32) a copy of the underlying agreements or indentures affecting any stock, bonds, or debentures offered or to be offered.

"In case of certificates of deposit, voting trust certificates, collateral trust certificates, certificates of interest or shares in unincorporated investment trusts, equipment trust certificates, interim or other receipts for certificates, and like securities, the Commission shall establish rules and regulations requiring the submission of information of a like character applicable to such cases, together with such other information as it may deem appropriate and necessary regarding the character, financial or otherwise, of the actual issuer of the securities and/or the person performing the acts and assuming the duties of depositor or manager.

"SCHEDULE B

"(1) Name of borrowing government or subdivision thereof;

"(2) specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated;

"(3) the amount of the funded debt and the estimated amount of the floating debt outstanding and to be created by the security to be offered, excluding intergovernmental debt, and a brief description of the date, maturity, character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect;

"(4) whether or not the issuer or its predecessor has, within a period of 20 years prior to the filing of the registration statement, defaulted on the principal or interest of any external security, excluding intergovernmental debt, and, if so, the date, amount, and circumstances of such default, and the terms of the succeeding arrangement, if any;

"(5) the receipts, classified by source, and the expenditures, classified by purpose, in such detail and form as the Commission shall prescribe for the latest fiscal year for which such information is available and the 2 preceding fiscal years, year by year;

"(6) the names and addresses of the underwriters;

"(7) the name and address of its authorized agent, if any, in the United States;

"(8) the estimated net proceeds to be derived from the sale in the United States of the security to be offered;

"(9) the price at which it is proposed that the security shall be offered in the United States to the public or the method by which such price is computed. A variation in price may be proposed prior to the date of the public offering of the security, but the Commission shall immediately be notified of such variation;

"(10) all commissions paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which the underwriter is interested, made, in connection with the sale of such security. Where any such commission is paid, the amount of such commission paid to each underwriter shall be stated;

"(11) the amount or estimated amounts, itemized in reasonable detail, of expenses, other than the commissions specified in paragraph (10) of this schedule, incurred or

borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, and other charges;

"(12) the names and addresses of counsel who have passed upon the legality of the issue;

"(13) a copy of any agreement or agreements made with any underwriter governing the sale of the security within the United States; and

"(14) an agreement of the issuer to furnish a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation, where necessary, into the English language. Such opinion shall set out in full all laws, decrees, ordinances, or other acts of Government under which the issue of such security has been authorized.

"TITLE II

"SEC. 201. For the purpose of protecting, conserving, and advancing the interests of the holders of foreign securities in default, there is hereby created a body corporate with the name 'Corporation of Foreign Security Holders' (herein called the 'Corporation'). The principal office of the Corporation shall be located in the District of Columbia, but there may be established agencies or branch offices in any city or cities of the United States under rules and regulations prescribed by the board of directors.

"SEC. 202. The control and management of the Corporation shall be vested in a board of 6 directors, who shall be appointed and hold office in the following manner: As soon as practicable after the date this act takes effect the Federal Trade Commission (hereinafter in this title called 'Commission') shall appoint six directors, and shall designate a chairman and a vice chairman from among their number. After the directors designated as chairman and vice chairman cease to be directors, their successors as chairman and vice chairman shall be elected by the board of directors itself. Of the directors first appointed, two shall continue in office for a term of 2 years, two for a term of 4 years, and two for a term of 6 years, from the date this act takes effect, the term of each to be designated by the Commission at the time of appointment. Their successors shall be appointed by the Commission, each for a term of 6 years from the date of the expiration of the term for which his predecessor was appointed, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of such predecessor. No person shall be eligible to serve as a director who within 5 years preceding has had any interest, direct or indirect, in any corporation, company, partnership, bank, or association which has sold, or offered for sale, any foreign securities. The office of a director shall be vacated if the board of directors shall at a meeting specially convened for that purpose by resolution passed by a majority of at least two thirds of the board of directors, remove such member from office, provided that the member whom it is proposed to remove shall have 7 days' notice sent to him of such meeting and that he may be heard.

"SEC. 203. The Corporation shall have power to adopt, alter, and use a corporate seal; to make contracts; to lease such real estate as may be necessary for the transaction of its business; to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal; to require from trustees, financial agents, or dealers in foreign securities information relative to the original or present holders of foreign securities and such other information as may be required and to issue subpenas therefor; to take over the functions of any fiscal and paying agents of any foreign securities in default; to borrow money for the purposes of this title, and to pledge as collateral for such loans any securities deposited with the corporation pursuant to this title; by and with the consent and approval of the Commission to select, employ, and fix the compensation of officers, directors, members of committees, employees, attorneys, and agents of the Corporation, without regard to the provisions of other laws applicable to the employment and compensation of officers or employees of the United States; to define their authority and duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; and to prescribe, amend, and repeal, by its board of directors, bylaws, rules, and regulations governing the manner in which its general business may be conducted and the powers granted to it by law may be exercised and enjoyed, together with provisions for such committees and the functions thereof as the board of directors may deem necessary for facilitating its business under this title. The board of directors of the Corporation shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid.

"SEC. 204. The board of directors may—

"(1) Convene meetings of holders of foreign securities.

"(2) Invite the deposit and undertake the custody of foreign securities which have defaulted in the payment either of principal or interest, and issue receipts or certificates in the place of securities so deposited.

"(3) Appoint committees from the directors of the Corporation and/or all other persons to represent holders of any class or classes of foreign securities which have defaulted in the payment either of principal or interest and determine and regulate the functions of such committees. The chairman and vice chairman of the board of directors shall be ex officio chairman and vice chairman of each committee.

"(4) Negotiate and carry out, or assist in negotiating and carrying out, arrangements for the resumption of payments due or in arrears in respect of any foreign securities in default or for rearranging the terms on which such securities may in future be held or for converting and exchanging the same for new securities or for any other object in relation thereto; and under this paragraph any plan or agreement made with respect to such securities shall be binding upon depositors, providing that the consent of holders resident in the United States of 60 percent of the securities deposited with the Corporation shall be obtained.

"(5) Undertake, superintend, or take part in the collection and application of funds derived from foreign securities which come into the possession of or under the control or management of the Corporation.

"(6) Collect, preserve, publish, circulate, and render available in readily accessible form, when deemed essential or necessary, documents, statistics, reports, and information of all kinds in respect of foreign securities, including particularly records of foreign external securities in default and records of the progress made toward the payment of past-due obligations.

"(7) Take such steps as it may deem expedient with the view of securing the adoption of clear and simple forms of foreign securities and just and sound principles in the conditions and terms thereof.

"(8) Generally, act in the name and on behalf of the holders of foreign securities the care or representation of whose interests may be entrusted to the Corporation; conserve and protect the rights and interests of holders of foreign securities issued, sold, or owned in the United States; adopt measures for the protection, vindication, and preservation or reservation of the rights and interests of holders of foreign securities either on any default in or on breach or contemplated breach of the conditions on which such foreign securities may have been issued, or otherwise; obtain for such holders such legal and other assistance and advice as the board of directors may deem expedient; and do all such other things as are incident or conducive to the attainment of the above objects.

"SEC. 205. The board of directors shall cause accounts to be kept of all matters relating to or connected with the transactions and business of the Corporation, and cause a general account and balance sheet of the Corporation to be made out in each year, and cause all accounts to be audited by one or more auditors who shall examine the same and report thereon to the board of directors.

"SEC. 206. The Corporation shall make, print, and make public an annual report of its operations during each year,

send a copy thereof, together with a copy of the account and balance sheet and auditor's report, to the Commission and to both Houses of Congress, and provide one copy of such report but not more than one on the application of any person and on receipt of a sum not exceeding $1: *Provided*, That the board of directors in its discretion may distribute copies gratuitously.

"SEC. 207. The Corporation may in its discretion levy charges, assessed on a pro-rata basis, on the holders of foreign securities deposited with it: *Provided*, That any charge levied at the time of depositing securities with the Corporation shall not exceed one fifth of 1 percent of the face value of such securities: *Provided further*, That any additional charges shall bear a close relationship to the cost of operations and negotiations including those enumerated in sections 203 and 204 and shall not exceed 1 percent of the face value of such securities.

"SEC. 208. The Corporation may receive subscriptions from any person, foundation with a public purpose, or agency of the United States Government, and such subscriptions may, in the discretion of the board of directors, be treated as loans repayable when and as the board of directors shall determine.

"SEC. 209. The Reconstruction Finance Corporation is hereby authorized to loan out of its funds not to exceed $75,000 for the use of the Corporation.

"SEC. 210. Notwithstanding the foregoing provisions of this title, it shall be unlawful for, and nothing in this title shall be taken or construed as permitting or authorizing, the Corporation in this title created, or any committee of said Corporation, or any person or persons acting for or representing or purporting to represent it—

"(a) to claim or assert or pretend to be acting for or to represent the Department of State or the United States Government;

"(b) to make any statements or representations of any kind to any foreign government or its officials or the officials of any political subdivision of any foreign government that said Corporation or any committee thereof or any individual or individuals connected therewith were speaking or acting for the said Department of State or the United States Government; or

"(c) to do any act directly or indirectly which would interfere with or obstruct or hinder or which might be calculated to obstruct, hinder, or interfere with the policy or policies of the said Department of State or the Government of the United States or any pending or contemplated diplomatic negotiations, arrangements, business or exchanges between the Government of the United States or said Department of State and any foreign government or any political subdivision thereof.

"SEC. 211. This title shall not take effect until the President finds that its taking effect is in the public interest and by proclamation so declares.

"SEC. 212. This title may be cited as the 'Corporation of Foreign Bondholders Act, 1933.'"

And the Senate agree to the same.

DUNCAN U. FLETCHER,
CARTER GLASS,
ROBERT F. WAGNER,
Managers on the part of the Senate.

SAM RAYBURN,
GEO. HUDDLESTON,
CLARENCE LEA,
JAMES S. PARKER,
CARL E. MAPES,
Managers on the part of the House.

Mr. McNARY. Mr. President, it has become the fixed practice of the Senate in matters of this kind, when they have not been printed, that they go over for the day, so that the Members of the Senate may read them. I ask the Senator to have this report printed and bring it up the first thing tomorrow.

Mr. FLETCHER. There is no rule requiring that; but——

Mr. McNARY. I say, that is the uniform practice of the Senate, and I desire to adhere to that practice.

The PRESIDING OFFICER. The report will lie on the table and go over until tomorrow, then.

MISSOURI RIVER BRIDGE, MISSOURI-KANSAS

Mr. McGILL. Mr. President, on the last day when the calendar was under consideration, the Senate passed a bill granting the consent of Congress to a compact or agreement between the States of Kansas and Missouri authorizing the acceptance, on behalf of said States, of title to a certain bridge across the Missouri River for which the Reconstruction Finance Corporation has made a loan to the company constructing the bridge. This is to be a toll bridge. That measure was passed by unanimous consent on the part of the Senate, and a similar measure was passed by the House with the exception of one or two slight amendments which do not alter the effect or meaning of the bill.

On the House measure—which is House Joint Resolution 159, Order of Business 89 of the Senate—we have a unanimous report by the Committee on Commerce favorable to the passage of the measure. I ask unanimous consent at this time that the House joint resolution be considered and passed by the Senate, which will merely have the effect of allowing the Senate bill to lapse.

Mr. BLACK. Mr. President, I desire to ask the Senator a question. Is this toll bridge to be owned by the States or by the company?

Mr. McGILL. It will be owned and managed by the States of Missouri and Kansas, as I understand.

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution (H.J.Res. 159) granting the consent of Congress to a compact or agreement between the State of Kansas and the State of Missouri authorizing the acceptance for and on behalf of the States of Kansas and Missouri of title to a toll bridge across the Missouri River from a point in Platte County, Mo., to a point at or near Kansas City, in Wyandotte County, Kans., and specifying the conditions thereof, which was read, as follows:

Whereas by an act of Congress approved May 22, 1928, a franchise was granted to the Interstate Bridge Co. for the construction of a toll bridge across the Missouri River at or near Kansas City, Kans., which has been extended by the acts of March 2, 1929, and June 30, 1930, and which is now owned by the Regional Bridge Co., a corporation organized and existing under the laws of the State of Delaware, as assignee of the Interstate Bridge Co.; and

Whereas authority has been granted the State Highway Commission of Kansas by an act of the Legislature of the State of Kansas, approved March 24, 1933, and published in the official State paper on March 27, 1933, and to the State Highway Commission of Missouri by an identical act, mutatis mutandis, of the General Assembly of the State of Missouri, approved April 17, 1933, to include in the highway systems of the respective States of Kansas and Missouri any toll bridge across any river forming a common boundary between the two States; to join in entering into contracts with the owner of any such toll bridge and with the holders of any bonds issued in connection with the construction of such bridge, by the terms of which the State Highway Commissions of Kansas and Missouri shall maintain, operate, and insure such bridge, and fix and collect and apply tolls thereon, and shall construct, maintain, and operate as free State highways, approaches thereto, and shall make and treat as part of the highway system of their respective States such entire bridge and any part of such approaches lying within their respective States; and to accept conveyance of title to and ownership of any such bridge or part thereof situated within their respective States, subject to any encumbrance against any such bridge and pledge of its tolls previously executed; and

Whereas Regional Bridge Co. has obtained an agreement from the Reconstruction Finance Corporation of the United States to aid in financing the construction of a bridge under the franchise granted by the act of May 22, 1928, and extensions thereof, under authority of the act of Congress known as the "Emergency Relief and Construction Act of 1932", by purchasing at par the bonds of Regional Bridge Co., secured by mortgage on such bridge, in the amount of $600,000, upon condition that certain requirements be met and agreed to by the States of Kansas and Missouri; and

Whereas the Legislature of the State of Kansas and the General Assembly of the State of Missouri, to make effective the acts of their respective legislative bodies herein cited and to meet the requirements imposed by the Reconstruction Finance Corporation, have each adopted the following resolution:

"Whereas Regional Bridge Co., a corporation organized and existing under the laws of the State of Delaware, is the owner and holder of a franchise granted by the Congress of the United States to construct (according to plans approved by the War Department of the United States), maintain, and operate a toll bridge across the Missouri River from a point at or near Kansas City in Wyandotte County, Kans., to a point in Platte County, Mo.; and

"Whereas Regional Bridge Co. desires to commence the construction of such bridge as soon as the same is fully financed; and

"Whereas Reconstruction Finance Corporation of the United States has agreed with Regional Bridge Co. to aid in financing the construction of such bridge, under authority of the act of Congress known as the 'Emergency Relief and Construction Act of 1932', by purchasing at par the bonds of Regional Bridge Co., secured by mortgage on such bridge, in the amount of $600,000; but

"Whereas Reconstruction Finance Corporation has imposed certain requirements, to be met and agreed to by the States of Missouri and Kansas, as conditions precedent to its purchase of such bonds; and

"Whereas inasmuch as such bridge will form an important link in and improvement to the highway systems of the States of Missouri and Kansas, and will be of benefit and advantage to the citizens of both and the public, and inasmuch as Regional Bridge Co., by resolution duly passed by the unanimous vote of its stockholders, has agreed to transfer and convey such bridge, free of costs, to the State Highway Commissions of Missouri and of Kansas, on behalf of such States of Missouri and Kansas jointly, such conveyance to be made as soon as such mortgage shall have been properly recorded in both Missouri and Kansas, subject to the right of and duty upon Regional Bridge Co. fully to complete the construction of such bridge, it is to the interest and benefit of the States of Missouri and Kansas, and the citizens of both, that the States of Missouri and Kansas meet and agree to the requirements of the Reconstruction Finance Corporation as conditions precedent to the purchase of such bonds: Now therefore

"In consideration of the benefits and advantage accruing to the States of Missouri and Kansas and the citizens of both, and in consideration of the adoption of this resolution by both the States of Missouri and Kansas, the States of Missouri and Kansas hereby enter into the following compact and agreement:

"*Be it resolved by the Senate of the State of Kansas (the House of Representatives agreeing thereto):*

"SECTION 1. Regional Bridge Co., its successors and assigns, shall be, and it is hereby, authorized to construct, maintain, and operate such bridge across the Missouri River from a point at or near Kansas City, in Wyandotte County, Kans., to a point in Platte County, Mo., according to plans approved by the War Department of the United States; and the said States hereby authorize Regional Bridge Co. to enter upon and use for the purpose of constructing, maintaining, and operating such bridge all necessary lands under water belonging to said States, and the fee to any lands so used shall upon such use be vested in such Regional Bridge Co.

"SEC. 2. The State Highway Commission of Missouri and the State Highway Commission of Kansas shall be, and they are hereby, authorized and directed to accept, when tendered by Regional Bridge Co., conveyance of such bridge and franchise therefor to such state highway commission jointly, on behalf of the States of Missouri and Kansas. Such conveyance shall not be in assumption of such mortgage, but shall expressly be subject to such mortgage, and to the right and duty upon Regional Bridge Co. fully to complete the construction of such bridge.

"SEC. 3. The State Highway Commission of Missouri and the State Highway Commission of Kansas shall be, and they, and each of them, hereby are, authorized to maintain, operate, and insure such bridge and to fix and collect tolls thereon and apply such tolls, and to enter into any and all contracts with said Reconstruction Finance Corporation, or any other party or parties considered by said highway commissions, or either of them, to be necessary or expedient for or in connection with the proper maintenance, operation, and insurance of such bridge and such fixing, collection, and application of tolls thereon, and to incur joint and several obligations under such contracts; and to construct and maintain, and to enter into any contracts severally with said Reconstruction Finance Corporation, or any other party or parties, considered by said highway commissions, or either of them, to be necessary or expedient, for or in connection with the construction and maintenance of approaches to such bridge and roadways leading thereto lying within their respective States. And said highway commissions, and each of them, are further authorized to make and treat as a part of the State highway system of their respective States the entire such bridge and that portion of the approaches thereto lying within their respective States, and to enter into contracts with the Reconstruction Finance Corporation or any other party or parties in respect thereto.

"SEC. 4. Neither the State of Kansas nor the State of Missouri, nor any department or political subdivision thereof, shall construct or cause to be constructed, or grant any right, privilege, or franchise for the construction of, any bridge, ferry, tunnel, or other competing facility across or under the Missouri River within a distance of 5 miles from said bridge, measured along the meanderings of the thread of the stream of the Missouri River, until the construction costs of said bridge, with interest thereon, shall have been fully paid.

"SEC. 5. To the faithful observance of this compact and agreement the States of Missouri and Kansas, by the adoption of this resolution, each pledges its good faith.

"SEC. 6. This compact and agreement shall be in force and take effect from and after its adoption by the General Assembly of the State of Missouri, and approval by the Governor of Missouri, and its adoption by the Legislature of the State of Kansas, and approval by the Governor of Kansas, and publication in the official State paper of the State of Kansas, and upon its receiving the consent and approval of the Congress of the United States." Therefore be it

Resolved, etc., That the consent of Congress is hereby given to the aforesaid compact or agreement and to each and every term and provision thereof, and to all agreements to be made pursuant thereto by and between the said States or any agencies, commissions, or public or municipal bodies thereof: *Provided*, That nothing herein contained shall be construed to affect, impair, or diminish any right, power, or jurisdiction of the United States or of any court, department, board, bureau, officer, or official of the United States, over or in regard to any navigable waters, or any commerce between the States or with foreign countries, or any bridge, railroad highway, pier, wharf, or other facility or improvement, or any other person, matter, or thing, forming the subject matter of the aforesaid compact or agreement or otherwise affected by the terms thereof: *And provided further*, That the right to alter, amend, or repeal this resolution or any part thereof is hereby expressly reserved.

The joint resolution was ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

SELECTION OF A GOVERNOR OF HAWAII (H.DOC. NO. 42)

The PRESIDING OFFICER laid before the Senate a communication from the President of the United States, which was read, as follows:

To the Congress:

It is particularly necessary to select for the post of Governor of Hawaii a man of experience and vision, who will be regarded by all citizens of the islands as one who will be absolutely impartial in his decisions on matters as to which there may be a difference of local opinion. In making my choice I should like to be free to pick either from the islands themselves or from the entire United States the best man for this post. I request, therefore, suitable legislation temporarily suspending that part of the law which requires the Governor of Hawaii to be an actual resident of the islands.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *May 22, 1933.*

The PRESIDING OFFICER. The communication will be printed and referred to the Committee on Territories and Insular Affairs.

PROTECTION OF GOVERNMENT RECORDS

Mr. ROBINSON of Arkansas. I ask the Chair to lay before the Senate a message from the House of Representatives relating to House bill 4220, which is on the Vice President's desk.

The VICE PRESIDENT laid before the Senate the action of the House of Representatives disagreeing to the amendment of the Senate to the bill (H.R. 4220) for the protection of Government records, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. ROBINSON of Arkansas. I move that the Senate agree to the conference asked by the House, and that the conferees on the part of the Senate be appointed by the Chair.

The motion was agreed to; and the Vice President appointed Mr. PITTMAN, Mr. ROBINSON of Arkansas, and Mr. BORAH conferees on the part of the Senate.

OFFICIAL REPORTERS OF DEBATES

Mr. HAYDEN. By direction of the Committee on Printing I report a Senate resolution and ask unanimous consent for its immediate consideration.

The VICE PRESIDENT. The resolution will be read.

The legislative clerk read the resolution (S.Res. 84) as follows:

Resolved, That James W. Murphy and Percy E. Budlong are hereby appointed Official Reporters for reporting the proceedings

and debates of the Senate until further order of the Senate, subject to all the duties and obligations of the contract made with D. F. Murphy, deceased, late reporter of the Senate, and to the supervision and control of the Committee on Printing on behalf of the Senate in all respects therein provided, and to receive payment for such services according to law: *Provided*, That the contract heretofore made with the late Theodore F. Shuey and said James W. Murphy be considered as terminated by the death of the former on May 18, 1933, and that said James W. Murphy and said Percy E. Budlong be paid for services rendered in reporting the debates and proceedings of the Senate at the rate allowable by law for such services from May 19, 1933, to the date upon which this resolution is agreed to by the Senate, both dates inclusive: *Provided further*, That in the event of the death of either said James W. Murphy or said Percy E. Budlong during any recess or adjourned period of the Senate, the survivor of them shall discharge all the duties and obligations and be entitled to all the rights and benefits of said contract made with said D. F. Murphy, deceased, and shall receive payment for such services according to law, until further order of the Senate.

The VICE PRESIDENT. Is there objection to the present consideration of the resolution?

Mr. HEBERT. Mr. President, in the absence of the Senator from Oregon [Mr. MCNARY] I ask if that Senator is informed concerning this resolution and what his desire is.

Mr. ROBINSON of Arkansas. I will say that the resolution is satisfactory to the Senator from Oregon.

Mr. HEBERT. With that assurance, I have no objection.

The VICE PRESIDENT. Without objection, the resolution is agreed to.

INSTRUCTION AT MILITARY ACADEMY OF POSHENG YEN

Mr. SHEPPARD. I ask unanimous consent for the immediate consideration of Calendar No. 76, Senate Joint Resolution 48, admitting a Chinese student to West Point. The joint resolution is in the usual form and is similar to other measures considered in cases of this kind.

The VICE PRESIDENT. Is there objection to the request of the Senator from Texas for the present consideration of the joint resolution?

There being no objection, the joint resolution (S.J.Res. 48) authorizing the Secretary of War to receive for instruction at the United States Military Academy at West Point Posheng Yen, a citizen of China, was read, considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Resolved, etc., That the Secretary of War be, and he is hereby, authorized to permit Posheng Yen to receive instruction at the United States Military Academy at West Point: *Provided*, That no expense shall be caused to the United States thereby, and that Posheng Yen shall agree to comply with all regulations for the police and discipline of the academy, to be studious, and to give his utmost efforts to accomplish the courses in the various departments of instruction, and that said Posheng Yen shall not be admitted to the academy until he shall have passed the mental and physical examinations prescribed for candidates from the United States, and that he shall be immediately withdrawn if deficient in studies or in conduct and so recommended by the academic board: *Provided further*, That in the case of said Posheng Yen the provisions of sections 1320 and 1321 of the Revised Statutes shall be suspended.

EXECUTIVE SESSION

Mr. ROBINSON of Arkansas. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

EXECUTIVE MESSAGES REFERRED

The VICE PRESIDENT laid before the Senate messages from the President of the United States submitting nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

REPORTS OF COMMITTEES

The VICE PRESIDENT. Reports of committees are in order.

Mr. VAN NUYS, from the Committee on the Judiciary, reported the nomination of Al W. Hosinski, of Indiana, to be United States marshal for the Northern District of Indiana, which was ordered to be placed on the calendar.

He, also, from the same committee, reported favorably the nomination of Norman D. Godbold, of Hawaii, to be first judge, Circuit Court, First Circuit of Hawaii, which was ordered to be placed on the calendar.

Mr. MCCARRAN, from the Committee on the Judiciary, reported favorably the nomination of T. Hoyt Davis, of Georgia, to be United States attorney, middle district of Georgia.

The VICE PRESIDENT. The nomination will be placed on the calendar.

UNITED STATES MARSHAL, MIDDLE DISTRICT OF GEORGIA

Mr. BRATTON. From the Committee on the Judiciary I report favorably the nomination of Edward B. Doyle, of Georgia, to be United States marshal, middle district of Georgia.

Mr. GEORGE. Mr. President, I ask unanimous consent for the immediate consideration of the nomination.

The VICE PRESIDENT. Is there objection?

Mr. HEBERT. Mr. President, the Senator from Oregon [Mr. MCNARY] wished me to say to the Senate that he had no objection to the consideration of this nomination, but he did object to a further proceeding which would involve notification to the President. I assume that is the understanding he had with the Senator from Georgia.

Mr. GEORGE. That is correct.

The VICE PRESIDENT. Is there objection to confirming the nomination?

There being no objection, the nomination was confirmed.

UNITED STATES ASSISTANT ATTORNEY GENERAL

Mr. KING. From the Committee on the Judiciary I report favorably the nomination of Pat Malloy, of Oklahoma, to be Assistant Attorney General. May I inquire of the Senator from Rhode Island, who is here, representing, as I understand, the leader on the other side, whether there will be any objection to the confirmation of this nomination?

Mr. HEBERT. I am not informed whether the Senator from Oregon would want that nomination to go over, but I take it, from what he said to me, that he would prefer that course to be adopted.

Mr. KING. Very well. I will ask that the nomination go to the calendar.

The VICE PRESIDENT. The nomination will be placed on the calendar.

THE CALENDAR—THE ADJUTANT GENERAL

The VICE PRESIDENT. The calendar is in order.

The Chief Clerk read the nomination of James Fuller McKinley to be The Adjutant General.

Mr. ROBINSON of Arkansas. Mr. President, it is recalled that the Senator from Maryland [Mr. TYDINGS] stated that he wished to discuss this nomination before final action was taken upon it. He appears not to be present this afternoon, and I ask that the nomination may go over for the day.

The VICE PRESIDENT. Without objection, the nomination will be passed over. That completes the calendar.

RECESS

Mr. ROBINSON of Arkansas. As in legislative session, I move that the Senate take a recess until immediately following the conclusion of the proceedings of the Senate sitting as a Court of Impeachment on tomorrow.

The motion was agreed to; and (at 6 o'clock and 6 minutes p.m.) the Senate, as in legislative session, took a recess until the conclusion of the proceedings of the Senate sitting as a Court of Impeachment on Tuesday, May 23, 1933, the hour of meeting of the Senate sitting as a Court of Impeachment being 10 o'clock a.m.

NOMINATIONS

Executive nominations received by the Senate May 22 (legislative day of May 15), 1933

MEMBER OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY

Arthur E. Morgan, of Ohio, to be a member of the board of directors of the Tennessee Valley Authority for the term expiring 9 years after May 18, 1933.

COLLECTOR OF CUSTOMS

Clement L. West, of Omaha, Nebr., to be collector of customs for customs collection district no. 46, with headquarters at Omaha, Nebr., to fill an existing vacancy.

CONFIRMATION

Executive nomination confirmed by the Senate May 22 (legislative day of May 15), 1933

UNITED STATES MARSHAL

Edward B. Doyle to be United States marshal, middle district of Georgia.

HOUSE OF REPRESENTATIVES

MONDAY, MAY 22, 1933

The House met at 11 o'clock a.m.

The Rev. Thomas Logan Justice, pastor of the First Baptist Church, Kings Mountain, N.C., offered the following prayer:

Omnipotent, omniscient, and omnipresent God, we bow before Thee this morning amidst all of the variegated circumstances of life, realizing the inability of human strength to discharge many of the duties and responsibilities which devolve upon us; and we beseech that Thou wilt take us close to Thyself as we enter into the opening session of this Congress and let all that is done here today redound to Thy glory and result in the stabilization of all of the departments of life with which men have to do. Bless our President and grant that throughout all this Nation he may be one of the objects of prayer, and all who are associated with him here and in the Senate and everywhere in official authority in this Republic may uphold him and cooperate with him and bring about a glorious realization of optimism and recovery in the various walks in which we find ourselves. Now we pray Thee to cleanse us from all sin, and may the great God of all the earth lead us and have His way and have His will until the day when every knee shall bow and every tongue shall confess to the glory of Him who is the Father of our Lord Jesus Christ. We ask it in His name. Amen.

The Journal of the proceedings of Saturday, May 20, 1933, was read and approved.

CORRECTION

Mr. CLARKE of New York. Mr. Speaker, there is evidently an omission in the RECORD of Saturday. Something has gone wrong somewhere with it. I propounded a parliamentary inquiry of the Speaker regarding whether a motion to adjourn was a preferential motion, and then made the request that if it were a preferential motion that it be preferred. There is an entire omission in the RECORD about this.

The SPEAKER. Without objection, the RECORD will be corrected in that particular.

Mr. CLARKE of New York. One minute, Mr. Speaker. Let us not move quite as fast as that. More than that, the RECORD should show that the Speaker's ruling was against that motion being a preferential one.

The SPEAKER. The Chair did not make any ruling at all.

Mr. BLANTON. Mr. Speaker, the gentleman's motion was made after a roll call had been ordered.

Mr. CLARKE of New York. Yes; but not a name had been called. That is the point.

Mr. BLANTON. Mr. Speaker, if what the distinguished gentleman from New York [Mr. CLARKE] says is correct, that Members had not yet begun to respond to their names on such roll call, his motion to adjourn would have been in order; for a motion to adjourn may be made after the yeas and nays are ordered, provided it is made before the roll call has begun (V, Hinds' Precedents 5363). My remembrance was that the roll call had begun and the Clerk had called several names.

Mr. CLARKE of New York. If there had not been a name called, I had the right to offer that motion.

Mr. BLANTON. Certainly; the gentleman is correct, and I might add that he is usually correct; and I deem it an honor that I find myself voting with him many times, except on partisan party questions.

Mr. CLARKE of New York. There had not been a name called.

Mr. BLANTON. There are precedents which hold that where the yeas and nays have been ordered, but no Member has yet responded to his name on roll call, that it is deemed that the roll call has not yet begun, and a motion to adjourn would be in order. Our distinguished Speaker is so uniformly correct in his rulings that if he ruled against the gentleman's contention he must have been of the opinion that the roll call had begun.

Mr. CLARKE of New York. The roll call had been ordered, but no names had been called.

The SPEAKER. The Chair thinks several names were called, but there had been no response.

SECURITIES REGULATION BILL

Mr. RAYBURN. Mr. Speaker, I call up the conference report on the bill (H.R. 5480) to provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes, and ask unanimous consent that the statement may be read in lieu of the report.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the statement.

CONFERENCE REPORT

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5480) to provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

"TITLE I

"SHORT TITLE

"SECTION 1. This title may be cited as the 'Securities Act of 1933.'

"DEFINITIONS

"SEC. 2. When used in this title, unless the context otherwise requires—

"(1) The term 'security' means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment, contract, voting-trust certificate, certificate of interest in property, tangible or intangible or, in general, any instrument commonly known as a 'security', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing.

"(2) The term 'person' means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof. As used in this paragraph the term 'trust' shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

"(3) The term 'sale', 'sell', 'offer to sell', or 'offer for sale' shall include every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value; except that such terms shall not include preliminary negotiations or